

FISCAL YEAR 2022 STRATEGIC PLAN & ANNUAL REPORT

Fiscal Year 2022 (July 1, 2021 TO June 30, 2022)

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EXECUTIVE SUMMARY

Background: The New Mexico Law Offices of the Public Defender

The mandate of the New Mexico Law Offices of the Public Defender (LOPD) is to fulfill New Mexico's constitutional and statutory guarantees of providing legal services to indigent adults and juveniles charged with criminal or delinquent acts in New Mexico. The LOPD provides legal counsel in every state court: the New Mexico Supreme Court, the New Mexico Court of Appeals, 15 District Courts, the Bernalillo County Metropolitan Court, and 25 Magistrate Courts. The New Mexico Public Defender Act, Sections 31-15-1 through 31-15-12, NMSA 1978, requires the Department to provide indigent criminal defense representation that complies with constitutional standards of effective representation under the V and VI Amendments of the United States Constitution and Article II, Sections 14, 15 and 18 of the New Mexico State Constitution.

Public Defender Commission

In 2012, the citizens of New Mexico passed a constitutional amendment declaring that the New Mexico Public Defender Department "is established as an independent state agency" to be administered by a Chief Public Defender and overseen by a newly-created Public Defender Commission (Commission). The Commission is charged with the selection of the Chief Public Defender, setting fair and consistent standards for the operation of LOPD, and approval of the annual budget request. The Chief Public Defender, appointed to a four-year term, is responsible for managing all day-to-day operations of LOPD. The Commission has been working diligently to support the department and our clients. At the end of FY19 and beginning of FY20, four new commissioners were appointed: Traci Neff, Melissa Sawyers, Retired Justice Richard Bosson, and former Senate Majority Leader Michael Sanchez.

Public Defender Commission Members

Thomas Joseph Clear III - Chairperson
Raymond Sanchez - Vice Chairperson
Daniel Banks - Secretary
Hon. Richard Bosson, Retired
Hugh Dangler
Traci Neff
Naomi Salazar
Michael Sanchez
Melissa Sawyers
Michael Stout
Hon. Michael Vigil, Retired



The Hon. Richard Bosson, retired, left, and Michael Sanchez are sworn into their positions.

Message from the Chief Public Defender

Being a public defender attorney, investigator, social worker or LOPD team member is more than a job. For many of us, it is a big part of who we are as people. The work expresses our values. It allows us to work for the change we want to see in the world. It gives us the satisfaction of helping our neighbors and improving our communities.

We decided to make this year's Annual Report different from those in years past because – well, this year has been different; it's creating a new reality in our courts and our society, and the LOPD is responding to, and working to shape that new reality. This Report will discuss how we are doing that.

This year has been a difficult one. We've held a steady course through seismic changes brought by the COVID-19, including threats to our funding and operations, and the isolation and upheaval of all of our normal patterns of work and life. But through all of this, New Mexico public defenders have worked to seize the momentum of America's new and long-overdue focus on issues central to our work: on systemic racism, and on the need for reform of the criminal justice system. Our work in the courts, the legislature, and our communities will ensure that the demands for change and for justice will not merely fade out, but will lead to a better, more just society.

Here's the thing: Public defenders show up. I am continually amazed at my colleagues and their dedication to their communities and to each other. Whether taking a phone call from a client, tracking down surveillance video, researching case law, appearing before a judge in a hectic courtroom, attending community meetings or legislative hearings, New Mexico public defenders have heart. We have grit. And we have vision. Thank you to all of the LOPD family for all that you do.

Thank you, also, to the leaders of our state for recognizing the importance of public defense in our courtrooms and our communities. We are here for you, and we are here for our clients and our communities, *la gente*, the people, of New Mexico.



Bennett J. Baur
Chief Public Defender
New Mexico Law Offices of the Public Defender

ADMINISTRATION

With offices located in Santa Fe and Albuquerque, administrative services encompass a broad range of centralized agency management functions, including fiscal oversight and budget preparation, information technology services, personnel and human resources, physical plant operations and leasehold management, training and staff development, litigation support (expert) services, and indigency and eligibility standards compliance.



PDC Vice Chair Raymond Sanchez, left, visits with Human Resources Director Ronald Herrera.

The administration actively advocates on a broad range of governmental, public policy, and criminal justice issues affecting LOPD and its clients. In addition, the Chief Public Defender, deputy chiefs, statewide unit coordinators and district defenders communicate LOPD's interests to criminal justice system constituents, which include local and state governments, district attorneys, jails, prisons, courts and local district office communities to assure the delivery of quality legal services for LOPD's adult and juvenile clients.

LOPD's administration works directly with the legislature, the judiciary, and the executive branches of state government. They also prepare and submit budgets and answer questions through informal mechanisms as well as through formal legislative hearings and presentations. LOPD's administrators and leadership provide formal testimony to legislative committees and interim committees, bill analysis, and substantive written information on a full range of issues directly and indirectly affecting client representation in the trial and appellate courts. The chief, deputy chiefs, and district defenders serve on a number of task forces, advisory committees and councils which shape public policy, criminal justice initiatives and legislation in New Mexico and nationally. Finally, LOPD administrative staff and leadership participates in many court initiatives and programs developed and implemented by the New Mexico Supreme Court, Court of Appeals, District Courts, and the Metropolitan/Magistrate courts.



LOPD commissioners and LOPD executive team members pose after a committee hearing in Santa Fe.

CLIENT ADVOCACY

LOPD has several statewide units, which offer specialized, statewide legal services for public defender clients.

Statewide Units

The statewide units are headed by:

- 1) Appellate Defender
- 2) Managing Attorney - Post-Conviction Unit
- 3) Director - Major Crimes Defender Unit
- 4) Managing Attorney - Mental Health Unit
- 5) Manager - Social Work Services

- **Appellate Division**

With a main office in Santa Fe and a satellite office in Albuquerque, LOPD's appellate division provides representation on direct appeal to indigent individuals before the New Mexico Supreme Court and the New Mexico Court of Appeals. Additionally, the appellate division provides appellate counsel when a request for interlocutory appeals of dispositive legal issues has been granted by an appellate court prior to final disposition or when appointed by the Supreme Court on certiorari review of a habeas corpus petition.

In FY2019, the appellate division was assigned to represent approximately 274 cases before the appellate courts. The appellate division also provides daily "Appellate Attorney on Duty" assistance to all public defender attorneys and contract defenders statewide. During sessions of the New Mexico Legislature, appellate division attorneys prepare the majority of LOPD agency analyses of proposed criminal legislation (Fiscal Impact Reports). The statutorily created position of Appellate Defender, appointed by the Chief Public Defender, hires and supervises appellate attorneys and support staff with the assistance of an appellate managing attorney and supervising attorney.

- **Habeas Corpus Unit**



The Habeas Corpus Unit, based in Albuquerque, provides statewide representation to individuals in post-conviction matters that fall under two general categories of cases: conviction cases and confinement cases. Conviction cases may include claims related to actual innocence, ineffective assistance of counsel, and illegal sentences. Confinement cases may include claims related to disciplinary actions resulting in lost goodtime, medical complaints, failure to award lump sum credits and parole issues. Additionally, since the recent

change in Rule 5-802 (habeas corpus), LOPD habeas unit conducts a pre-appointment review on all pro se petitions submitted to the court.

In FY2020, the habeas corpus unit, composed of four attorneys, received 361 pre-appointment petitions for review and completed 328 initial reviews, and were appointed on 107 cases. Due to COVID-19 and other factors, the habeas unit has seen an increase in three different types of workload, including 1) increase in petitions filed by inmates, 2) influx of cases from five to twenty, and five - life parole issues, and 3) increase in juvenile matters requiring representation due to recent changes in case law specifically affecting clients sentenced as juveniles to life without parole. This results in more pre-appointment reviews being generated and increased workloads.

- **Major Crimes Defender Unit**

In late FY2018, LOPD initiated a statewide reorganization of the structure through which LOPD provides representation to clients charged with serious felonies by creating a statewide unit. In FY2019, the unit was designated the “Major Crimes Defender Unit” (MCDU). In addition, the Mental Health managing attorney and another unit composed of senior attorneys were transferred into the unit to expand its representation and services to rural communities. MCDU includes seven attorneys and four dedicated staff including a social worker, investigator, paralegal and an office manager. This staff is housed in offices around the state, specifically: Albuquerque, Roswell, and Las Cruces.

MCDU is headquartered in Albuquerque and defends first degree murder and serious violent cases statewide. With the abolition of the death penalty in the 2009 Legislative Session, the unit focuses on defending cases carrying terms of life imprisonment: both first degree murder cases and child abuse resulting-in-death cases. The unit’s ability to do complex motions practice allows it to develop LOPD’s protocol for cases which rely heavily on discovery from hospitals. Its experience in homicide cases allows the unit to provide support and training statewide. The goal is to ensure that every rural client's representation is as experienced as that given to clients in more populous areas.

This new unit will tap experienced attorneys to foster mentorships and training opportunities for rural attorneys while working complex cases together. One of the principal objectives of this effort is to intervene for the client at the earliest stage possible working in collaboration with the local offices. In addition, the unit coordinates with managers in rural areas to provide support in offices that often do not have attorneys with the requisite experience to try complex cases.

LOPD has attorneys that specialize in representing clients on mental health cases. The attorneys work on a broad range of policy and program issues that impact people with mental illness or intellectual disabilities involved in the criminal and juvenile justice systems. One example is the support provided to defendants who participate in the Judicial Supervision Program Court (mental health court). Those who participate in the program are

less likely to re-offend due to meeting their medication and housing needs. LOPD helps to expand mental health court programs statewide by working with local LOPD district offices, district attorneys, the district courts, the Department of Health, and community service providers. With the assistance of these specialized attorneys, new mental health courts were established in the 1st Judicial District Court, Santa Fe County, and in the 11th Judicial District Court, San Juan County in 2012. Finally, the in-house expertise plays an integral part in the development of Mental Health Court Standards statewide.

- **Social Work Services**



LOPD continues its long-term goal to reduce the number of persons cycling through the criminal justice system. Social Workers have long been a critical part of that mission by diverting people at sentencing from jail or prison into treatment and housing programs of various types. LOPD supports mental health court, drug court, and veteran's court programs. Specialized programs help address the issues that bring the individual to the criminal justice system which in turn reduces recidivism and its associated costs. These programs help clients, help families and increase public safety. LOPD also advocates for secure housing for the severely and persistently mentally ill as a representative on the Behavioral Health Purchasing Collaborative.

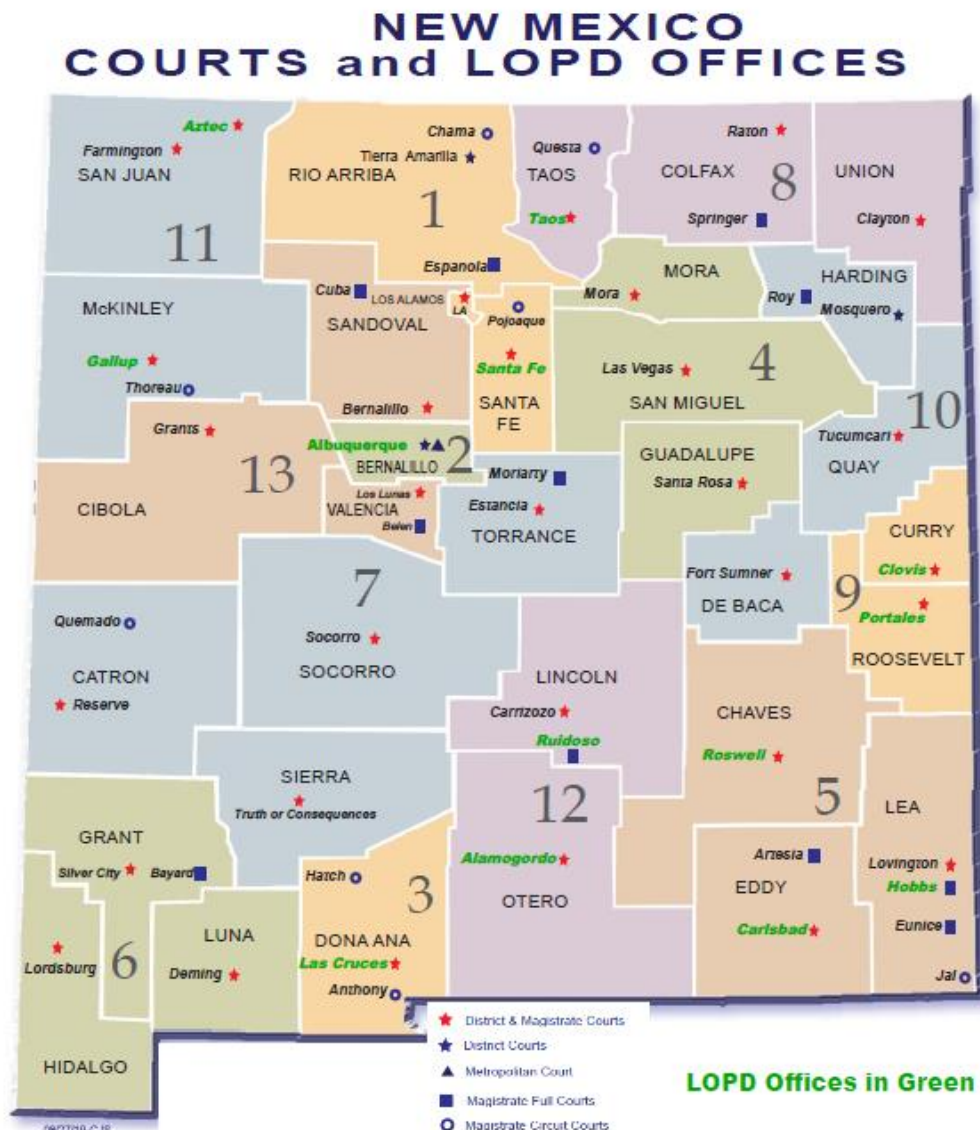
The Social Services Unit is a statewide unit with social workers and/or case managers housed in the vast majority of offices. Most LOPD clients struggle with challenges beyond the legal concerns for which they are represented. Often times these challenges precipitated criminal justice system involvement. Social workers are able to connect with defendants by influencing treatment and rehabilitation at the time when the client is most likely to accept help. Social workers and case managers assess and address client needs. They help clients access housing, benefits, mental health and substance abuse treatment, and provide support as they negotiate these complex care systems. Social workers and case managers connect clients to community resources and liaison with pre-trial, probation, and correctional discharge planners to ensure LOPD clients receive the proper care. Additionally, social workers and case managers are in a unique position to gather mitigating information and prepare reports and presentations for plea negotiations and sentencing hearings. Social Services Unit staff spend a great deal of time interviewing clients and family members as well as collecting and interpreting mental health and educational records.

LOPDs budget request includes additional social workers and all these positions would be stationed in Albuquerque, but travel the state to work complex cases and help in overwhelmed and underserved rural areas. The request also includes additional caseworkers and benefits specialists in some rural offices. Many of the rural offices have just one case manager or social worker, making it difficult to provide needed services to work with clients to address underlying issues contributing to recidivism. This is a more sustainable model as it

has been challenging to keep fulltime, licensed social workers in rural regions. Currently, social workers in Albuquerque are each assigned to at least 10 attorneys, facilitating a triage approach to client care. With additional social workers, the unit would be able to conduct the in-depth work necessary from the very beginning of a case to connect clients to resources and provide support throughout the life of a case, including any probation violations. An additional social worker is also needed to support the statewide Juvenile Division, specifically with complex serious youthful offender cases.

Public Defender District Offices

These district and regional offices provide legal counsel to the majority of LOPD's clients in a cost-effective and efficient manner. Our district/regional office operations deliver highly competent, quality legal services through the direct supervision and mentoring of staff lawyers by experienced trial attorneys.



First & Eighth Judicial Districts - Santa Fe, Rio Arriba, Los Alamos, and Taos Counties

- a) District Defender - Stationed in Santa Fe County
- b) Managing Attorney - First Judicial District
- c) Managing Attorney - Eighth Judicial District Taos

Second Judicial District Office - Albuquerque (Bernalillo County)

- a) District Defender
- b) Five Felony Division Managing Attorneys
- c) Juvenile Division Managing Attorney
- d) Two Metro Division Managing Attorneys

Third Judicial District Office - Las Cruces (Dona Ana County)

- a) District Defender
- b) Three Managing Attorneys
- c) Managing Attorney - Major Crimes Defender Unit

Fifth Judicial District Offices - Lea, Chaves, and Eddy Counties

- a) District Defender - Stationed in Chaves County
- b) Managing Attorney - Eddy County
- c) Managing Attorney - Chaves County
- d) Managing Attorney - Lea County



Lea County office in Hobbs

Ninth Judicial District Office - Curry and Roosevelt Counties

- a) District Defender - Stationed in Curry County
- b) Managing Attorney - Curry and Roosevelt

Eleventh Judicial District Office - San Juan & McKinley Counties

- a) District Defender - Stationed in San Juan County
- b) Managing Attorney - San Juan County
- c) Managing Attorney - McKinley County

Twelfth Judicial District Office -
Otero and Lincoln Counties

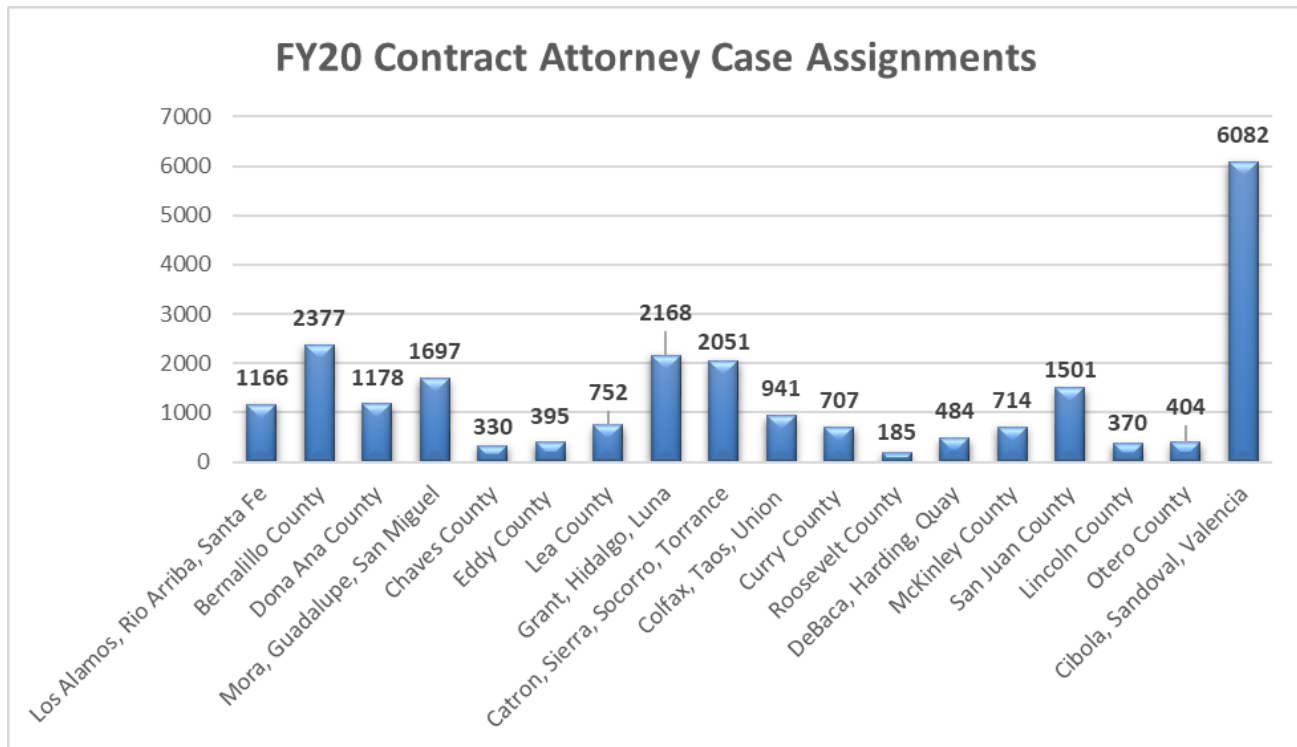
- a) District Defender - Stationed
in Lincoln County
- b) Managing Attorney - Otero
County



Otero County office in Alamogordo

Contract Counsel Legal Services (CCLS Unit)

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 that the public defender attorney staff cannot represent the client for legal conflicts of interests. In judicial districts and counties¹ 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 150 private attorneys who contract to provide primary and conflict of interest case representation statewide. In FY2020, the Contract Counsel Legal Services division handled 23,502 cases (approximately 35% of the cases represented by LOPD), with most of those cases being in areas without LOPD offices.¹



¹ Counties and Judicial Districts completely serviced through Contract Counsel Legal Services operations include:

1. Fourth Judicial District (San Miguel, Mora, Guadalupe)
2. Sixth Judicial District (Grant, Luna, Hidalgo)
3. Seventh Judicial District (Sierra, Socorro, Torrance, Catron)
4. Two of the counties in the Eighth Judicial District (Union, Colfax)
5. Tenth Judicial District (Harding, De Baca, Quay)
6. Thirteenth Judicial District (Sandoval, Valencia, Cibola)

LOPD PROGRAMS

Agency Mission

To provide holistic legal representation of the highest quality to persons charged with criminal offenses in New Mexico, to protect constitutional rights, to advocate zealously for our clients, and to reduce criminal recidivism and redirect clients from the criminal justice system throughout the State of New Mexico.

*“Injustice anywhere is a
threat to justice everywhere.”
Dr. Martin Luther King, Jr.*

Program Name

The Law Offices of the Public Defender (Public Defender Department) State of New Mexico Public - Indigent Criminal Defense Legal Services.

Agency Purpose

LOPD's purpose is to meet New Mexico's federal and state constitutional mandates by providing effective legal and holistic representation and advocacy for indigent juveniles and adult criminal defendants, serving the community as a justice partner to guarantee a fair and efficient legal system that reduces recidivism.

Stages of Client Representation (Program Activities)

Pre-Indictment Representation Tasks

Pre-Indictment representation tasks include, but are not limited to:

1. Counseling and advising clients on eligibility for pre-prosecution programs, drug court diversion programs, and Judicial Supervision Program Courts (veterans court, mental health courts), and the Early Plea Programs;
2. Conducting pre-indictment investigations, interviews and plea negotiations;
3. Handling pre-indictment interaction with juvenile probation and parole officers; and
4. Advising individuals “under investigation” for criminal offenses.

This stage of representation also covers initial appearances, preliminary hearings and grand jury representation, including regular submission of evidence alert letters to grand jurors pursuant to New Mexico Court rules.

Pre-indictment tasks have expanded to include representation at pre-trial detention hearings, which has created an additional responsibility for the department. A new bond rule established after a constitutional amendment allows district attorneys to file a motion requesting that the court detain a defendant charged with a felony pending trial. The new rule requires the court to set a hearing on the motion within five days of filing. Public defenders now must represent defendants at the pre-trial detention hearings.

In FY2020, 1,288 motions for pretrial detention were filed in the Second Judicial District alone. This added workload requires public defender attorneys and staff to prepare and represent clients at the hearings. Approximate preparation time is based on the type of charge and criminal history; however, at a basic level, the hearing itself requires due process and depending on the evidence presented, may last several hours. This added workload is not reflected in the agency's data on attorney caseloads but is additional work required to properly defend and advocate for clients under constitutional mandates.

Second Judicial District Attorney – Pretrial Detention Motions Filed			
Year/ Quarter	Motions Filed	Motions Granted	Percentage Granted
FY18	1261	535	42.4%
FY19	1140	494	43.3%
FY20	1288	652	50.6%
FY20 Q1	318	146	45.9%
FY20 Q2	303	166	54.8%
FY20 Q3	353	182	51.6%
FY20 Q4	314	158	50.3%
FY20 Total	1288	652	50.6%

Case Preparation

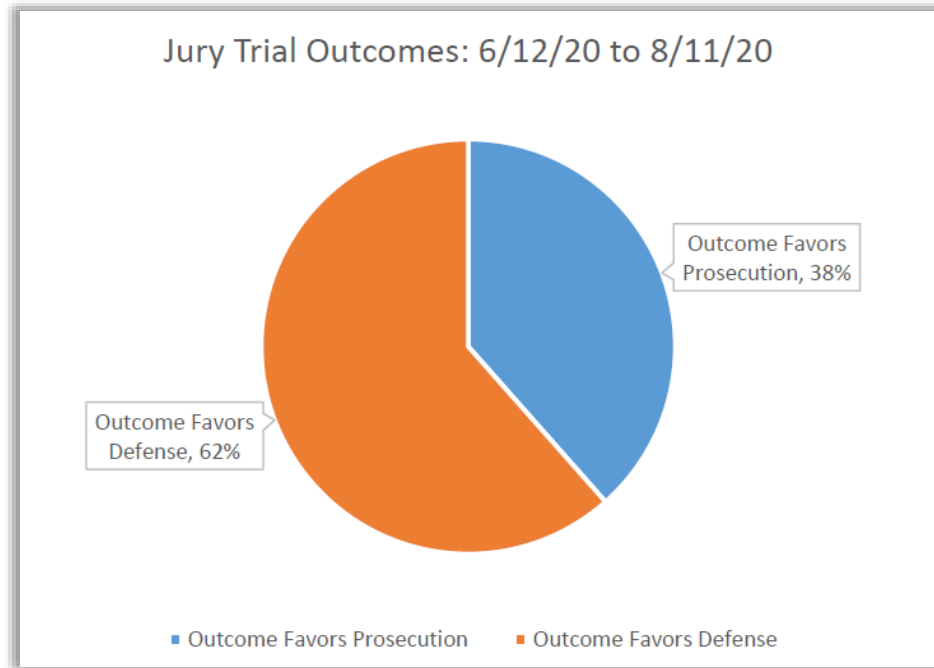
Case preparation and Courtroom Advocacy Tasks Include:

Obtaining and evaluating discovery	Directing and managing case investigations
Interviewing and counseling clients	Interviewing witnesses
Brainstorming and collaborating with colleagues on case defenses	Conducting legal research
Pretrial litigation of substantive legal issues	Preparing trial materials
Researching scientific evidence	Preparation and presentation of necessary motion hearings/trials
Requesting appropriate expert analysis and testimony	Engaging in plea negotiations where appropriate
Sentencing mitigation and presentation	Preparation of appellate docketing statements or post-trial motions

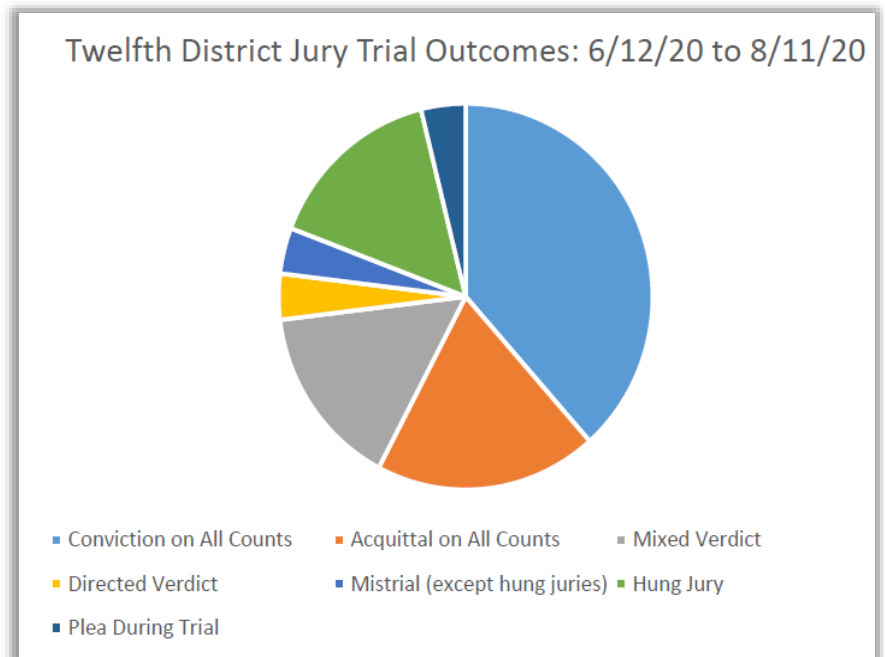
Courtroom/Trial Work and Sentencing Advocacy

LOPD's courtroom and trial work provides high quality representation to clients statewide, despite overwhelming caseloads and workloads. Trial attorneys advocate in evidentiary and various other hearings, and trials. LOPD attorneys skillfully work their cases and work closely with clients to determine if there are any challenges that contributed to contact with the criminal justice system. Those attorneys refer clients to LOPD's social services unit for assessment. Cases are resolved in the best interests of the clients, which

often includes trials. In the Twelfth Judicial District in particular, over a two-month period once courts restarted trials after the COVID-19 closures, attorneys obtained a favorable outcome for clients in 62% of cases that went to trial, illustrated in the graph below.



The data was compiled and analyzed by District Defender Matthew Chavez. Jury trials that did not result in acquittal on all counts or conviction on all counts were categorized as either favoring the prosecution or favoring defense by analyzing the specific outcomes of the counts in each case. These cases fall into five categories: trials that resulted in mixed verdicts, directed verdict, mistrials, hung juries, and those that pled during trial.





5th District Defender Deirdre Ewing makes a dry run for court reopening with other criminal justice partners.



Attorney Jennifer Burrill represents a client in 1st District Court.

Post-Trial Appeals

LOPD's post-trial work includes appeals and special writs to the New Mexico Court of Appeals and appeals and special and habeas corpus writs to the New Mexico Supreme Court.

Post-Conviction Representation

Post-conviction representation includes: adult and juvenile probation violation hearings, habeas corpus petitions and hearings, and probation and parole review hearings for convicted sex offenders. By statute, LOPD is charged with providing legal representation at review hearings at the initial 5 year review and at 2.5 year increments for every individual convicted of a sex offense in New Mexico and serving an indeterminate term of probation or parole.

Administrative and Legislative Functions

Administrative and legislative functions of LOPD include: eligibility determinations, human resources management, procurement, payroll, fiscal and budget management, training, policy development, legislative consultation and testimony, clerical and secretarial support, information system resources, contract management, strategic planning, maintenance of information and property, quality assurance, policy interaction with legal associations, courts, and the criminal justice community, and service to client advocacy groups and related initiatives by state, county, and municipal entities.

One administrative function includes the standards and policies for determining whether a defendant qualifies for public defender representation. LOPD is dedicated to finding creative solutions for the problem of overwhelming caseloads of its attorneys and focusing resources on the indigent. Since the LOPD mission is to serve the indigent, there is an evaluation of eligibility to ensure the best use of limited resources. At the end of FY2018, LOPD significantly changed its *Eligibility Policy* to no longer offer reimbursement contracts to defendants who do not qualify for a public defender. Qualification for a public defender

requires that the prospective client's income not exceed 200% of the federal poverty guidelines. Effective April 2018, a defendant who does not qualify as indigent will not be represented and instead is strongly urged to retain a private attorney.

Criminal Justice Reform

Representatives of the LOPD continue to be active participants across the state in many initiatives designed to improve the criminal justice system and ensure efficiency for all criminal justice partners. These include the NM Sentencing Commission, the Bernalillo County Criminal Justice Review Commission, Criminal Justice Coordinating Councils, the Legislative Interim Subcommittee on Criminal Justice Reform, the Legislative Interim Standing Committee on Corrections, Courts and Justice, the CYFD Juvenile Justice Stakeholders Committee, the NM Sentencing Commission Juvenile Justice Committee, the Anne E. Casey Foundation's Juvenile Detention Alternative Initiative, the NM Drug Court Advisory Committee, the NM Association of Drug Court Professionals, the City of Santa Fe Law Enforcement Assisted Diversion Program (LEAD), mental health advisory and other taskforces at the local levels throughout the state.



In August 2020, Ibukun Adepoju, District Defender for the 9th and part of the 5th judicial districts, including Clovis, Portales and Hobbs, was selected to serve on New Mexico's Council for Racial Justice subcommittee on Public Safety and Law Enforcement.

"I feel incredibly honored to sit on this council but even more importantly the subcommittee on public safety and law enforcement. I hope to represent the interests of criminal defense on this committee," Adepoju said.

In addition to participating in organizations, LOPD continues to advocate for reforms in the criminal justice system that would allow LOPD to work more efficiently and effectively and for the betterment of our clients and communities. This cannot be accomplished overnight and will not reduce the demands on the system for an indefinite time.



LOPD's Albuquerque office hosts a consortium of court and community providers for homelessness services.

Advocating for Systemic Change

In July, LOPD joined with the New Mexico Attorney General's Office, the First Judicial District Attorney's Office, and several immigrant rights advocates and community groups to sue the U.S. Immigration and Customs Enforcement to prevent them from detaining people who are conducting business at state courthouses. The suit followed years of observing and fighting against ICE action in courthouses. LOPD's leadership and Metro Court attorneys were among about 60 people gathered outside Metro Court for a press conference and protest against ICE enforcement inside courthouses.



LOPD joins in a press conference and protest against ICE arrests in courthouses.

LOPD also worked aggressively at the outbreak of COVID-19 to keep inmates in our state prisons as safe as possible, joining with the ACLU and the New Mexico Criminal Defense Lawyers Association to file an emergency petition asking the New Mexico Supreme Court to immediately reduce the number of people in state prisons. Specifically, the petition urged the Court to require the release of people who were at an increased risk of serious illness from COVID-19, those who were within a year of release, and those who were held on certain infractions, like parole and probation violations. LOPD's Appellate Defender Kim Chavez-Cook argued the case before the Supreme Court.

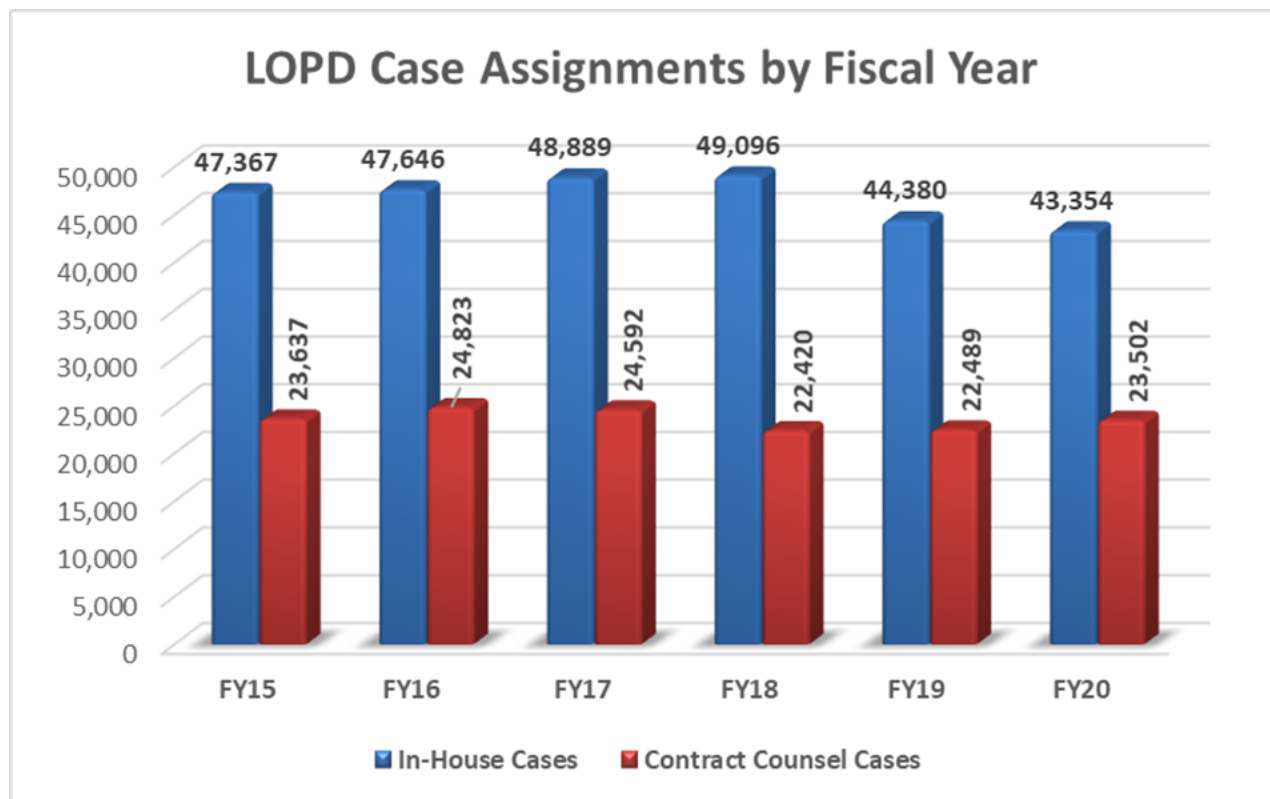


LOPD's Appellate Defender Kim Chavez-Cook argues for emergency inmate release amid the COVID-19 pandemic.

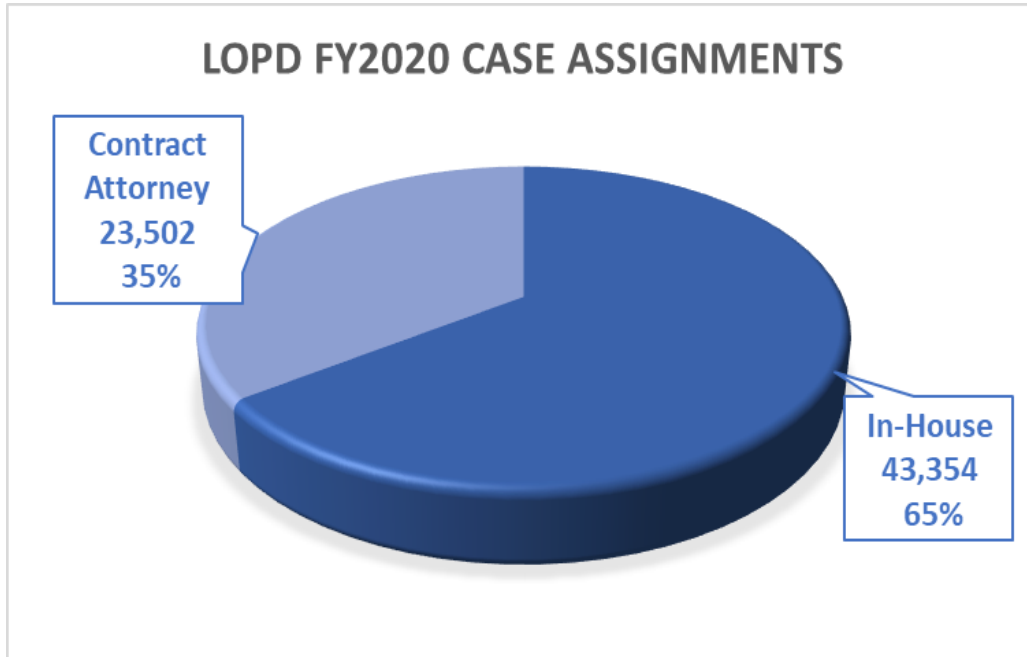
CRITICAL CHALLENGES AND EFFORTS TO ADDRESS THEM

Caseloads

In FY2020, LOPD assigned 66,856 cases. Due to LOPD's efforts to increase retention and stability in staffing, combined with implementation of statewide data entry standards, case assignments have reduced slightly over the last two fiscal years. Regardless, the resulting caseload for both LOPD attorneys and contract defenders is high enough to cause serious doubt whether most defendants are receiving constitutionally adequate representation. Litigation seeking to flesh-out constitutional mandates regarding caseloads has been pursued in the state Supreme Court and District Courts.

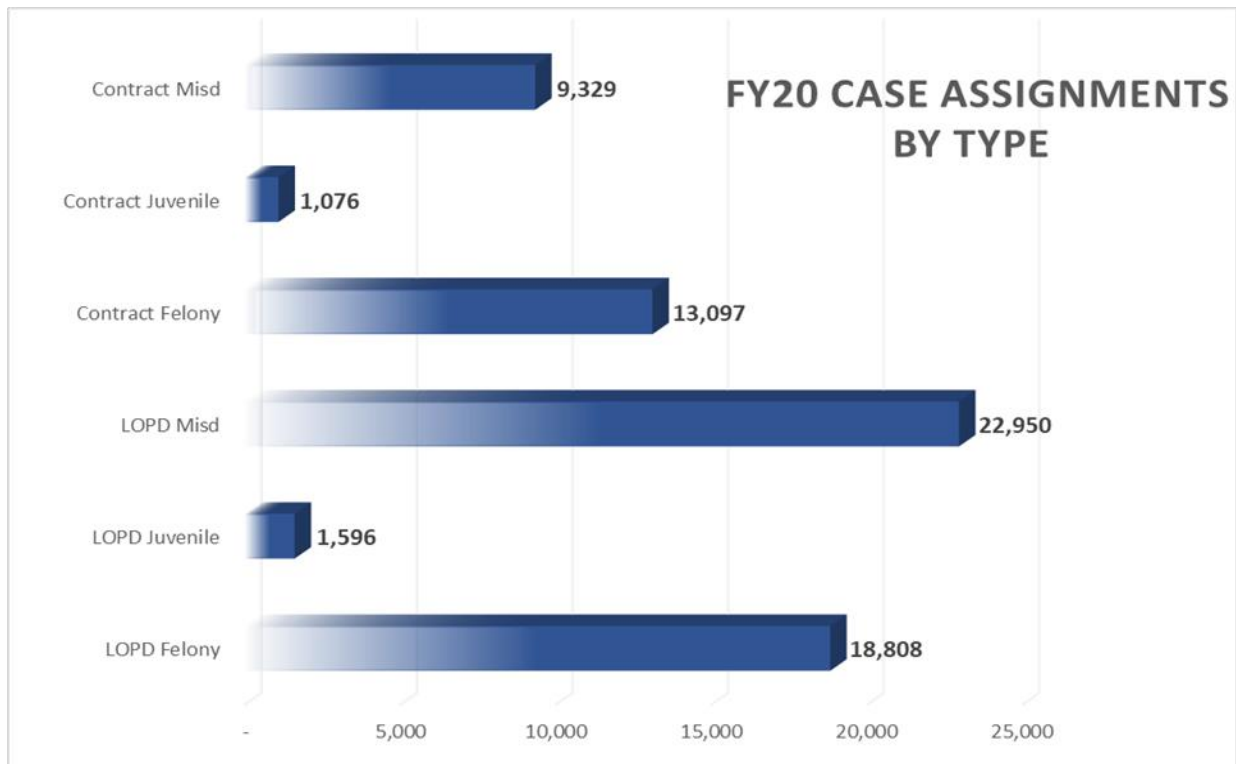


The systemic problems with contract defense in the hybrid model are exacerbated by the excessive workloads carried by many in-house attorneys (of course, contract defenders may suffer from excessive caseloads as well). In FY2020, LOPD attorneys were assigned an average total of 248 (108 felony, 9 juvenile, and 131 misdemeanor) cases each. LOPD has few options to ease excessive caseloads because the District Attorneys have exclusive control over the cases that are filed. One option for LOPD is “overflowing” in-house cases to contract defenders, however, the problem is simply transferred to the contractors who also have excessive caseloads. Time spent traveling to court and jail in rural New Mexico exacerbates workload issues for both public and contract defenders. Caseload measurement does not account for travel time or in-court waiting time but is critical to evaluating workloads.



There is a shared responsibility between LOPD and the Legislative and Executive Branches to provide constitutionally adequate representation statewide. Because of continuing concerns about caseloads, the Public Defender Commission has promulgated a new rule to address excessive attorney workloads. The objective of the rule is to establish guidelines for the Department to use when excessive attorney workloads would make it unethical for the affected attorneys to accept additional clients or would violate the New Mexico Rules of Professional Conduct or the federal and state constitutional rights of LOPD clients.

LOPD is in the vanguard of a national public defender movement to secure reasonable workloads by conducting a workload study and instituting time keeping to measure actual work time spent on cases. Assessing workload will provide data to assist LOPD in increasing efficiency and accurately identify where and when attorneys are being assigned too many cases for effective assistance of counsel, as evidenced in the chart on the top of page 21.



LOPD will compare workloads nationally and accurately assess the resources needed for every type of case and assess future requests for additional resources. The Legislative Finance Committee’s letter of support to the National Association for Public Defense for a workload study was crucial in obtaining a substantial grant for the American Bar Association to work with LOPD on this New Mexico study. LOPD will use the data to better understand the role of caseloads on departmental performance measures and the public defender’s role in the criminal justice system.

LOPD is dedicated to improving accuracy in data reporting. LOPD is also analyzing data to better understand the roles of caseloads on departmental performance measures and our role in the criminal justice system. In order to further this goal, LOPD has dedicated additional resources, including the transition to a new case management system in April 2019. Additionally, LOPD allocated an additional part-time staff member to assist with collecting and reporting data for the quarterly reports. Staff has worked diligently to double and triple check data to reduce error rate and ensure more accurate reporting. LOPD has also worked to assemble information quarterly and also provides an annual summary.

The Legislative Finance Committee has consistently praised LOPD’s efforts in reporting performance measures through numerous FY2018, FY2019 and FY2020 report cards and other reports. The following is an excerpt from a “Selected Performance Highlights” report:

Courts and Justice (page 29)

In the third quarter of the new unified report for the justice system in New Mexico, the Public Defender continued to lead the way for quality reporting. The Public Defender Department provides thorough understanding of the department's performance with meaningful, comprehensive measures, while the courts and district attorneys have fallen behind. Staff continues to work with both the courts and the district attorneys to improve reporting and enhance understanding of agency work.

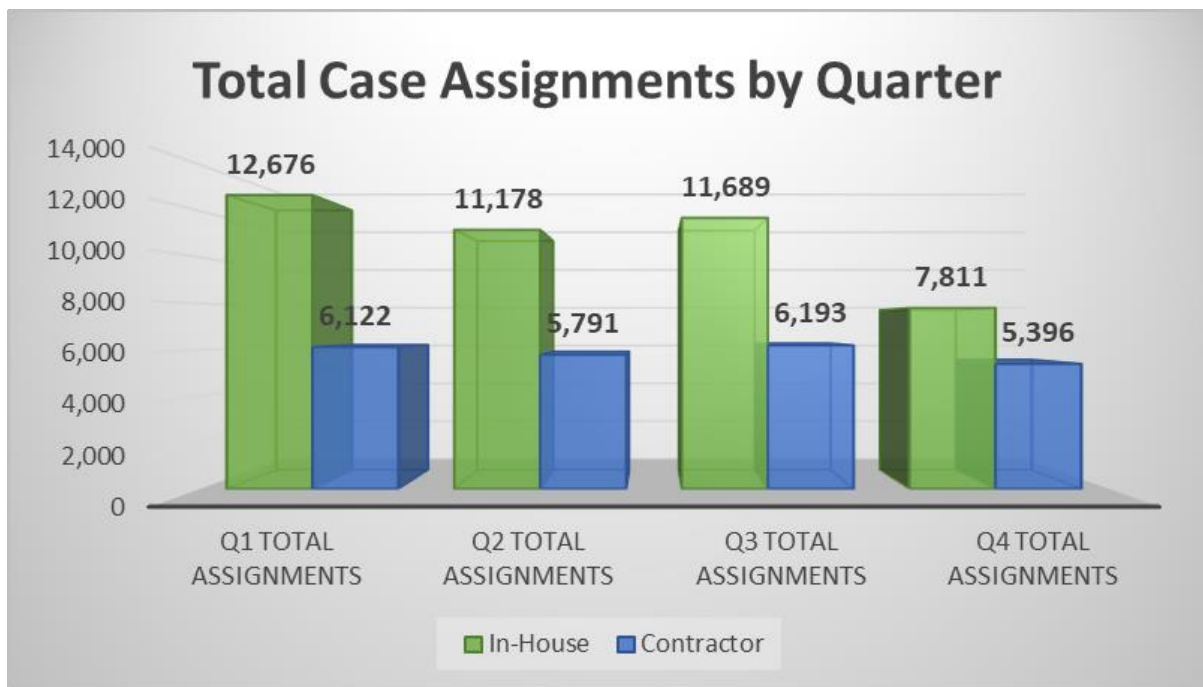
Impact of the COVID-19 Pandemic on the Criminal Justice System and Client Representation

The COVID-19 pandemic has impacted the entire criminal justice system. KOB recently did a story, "[Delayed Justice: Inside look at the New Mexico criminal court system shows new challenges and a growing backlog.](#)" The story clearly explains and demonstrates the impact of the pandemic on our clients and our attorneys. In addition, numerous courts have been forced to shut down for a day to as much as two weeks due to an employee testing positive for COVID-19. For example, the Las Cruces magistrate court was shut down; trials were suspended and all their employees quarantined for two weeks (see the story [HERE](#).) Court changes force our office and clients to adjust to constant modifications to scheduling. In addition, each LOPD office continues to struggle with adapting to the inconsistent interpretations of the NMSC's COVID-19 order on trial procedure and protocol by local courts, judges, and law enforcement.

LOPD attorneys are faced with many struggles, the most paramount being obstacles to meeting with clients in person to develop rapport. There are many obstacles to virtual representation, and the most detrimental effect is on the attorney client relationship. There are ongoing difficulties for attorneys needing to consult with our clients during hearings. Attorneys are unable to discuss the process, explain what the judge or district attorney is saying (or asking for), or ask/answer our clients' questions.

The closures and slowdowns in the courts caused by the COVID-19 pandemic have delayed trials for clients, many of whom are being held in jail awaiting trial, limiting their ability to have a constitutionally guaranteed speedy trial. There is an ongoing concern that more clients are accepting plea offers, despite being advised against the plea by their attorney, because they are desperate to get out of jail with the pandemic spreading in jail and prison facilities.

One other effect of the COVID-19 pandemic is demonstrated in the graph below, which shows case assignments by quarter for in-house attorneys and contract defenders. Due to the pandemic and its effect on case filings by law enforcement, case assignments were down in the fourth quarter.



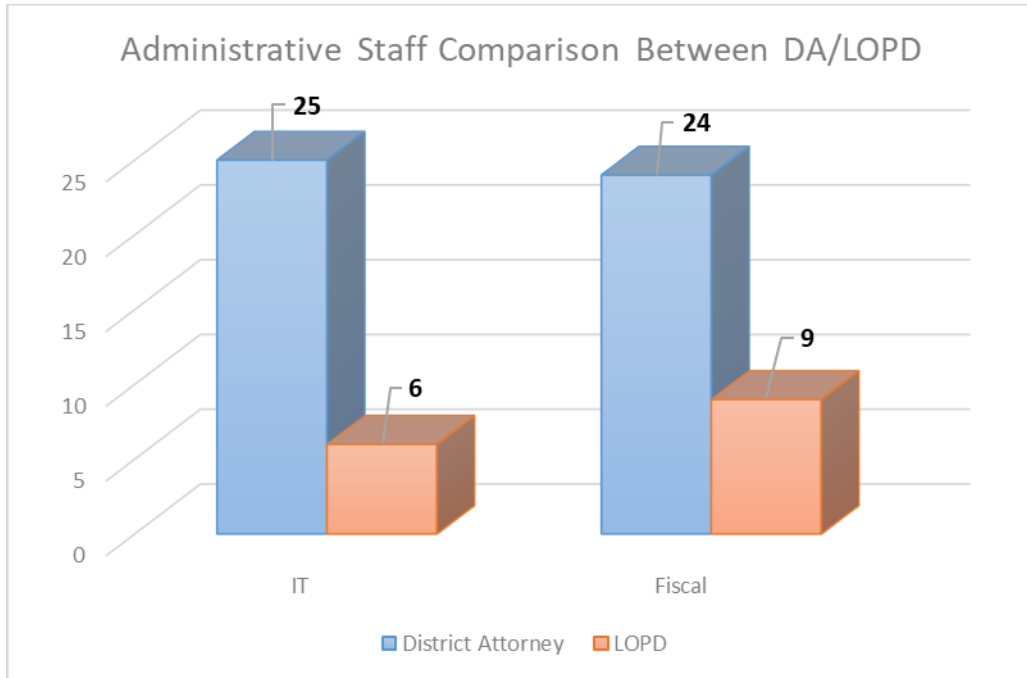
Anticipated Increase in Caseloads, Workloads and Transfer of Expenses

LOPD anticipates that the COVID-19 pandemic will affect client cases for multiple fiscal years. The drastic increase in New Mexico's unemployment rate results in an increase in the number of defendants that will qualify for public defender representation, which in turn results in an increase in case assignments for attorneys. In light of the pandemic, there is an increased need for mental health services for New Mexicans and there is an expected increase in treatment for addiction(s) and/or other mental health diagnoses, which requires additional social work resources to connect clients with treatment while subsequently reducing the number of people reentering the criminal justice system. This is especially impactful for rural communities around the state.

In addition, LOPD anticipates that the COVID-19 pandemic will affect its budget for multiple fiscal years. The courts are experiencing a backlog of trials due to COVID-19. This backlog has deferred and transferred related trial expenses for complex case compensation and expert witness costs from FY2020 to FY2021 and FY2022.

Public Defense Funding Compared to Other Criminal Justice Partners

LOPD appreciates the legislative commitment to incrementally align its budget with its mission so that the Department may fulfill its constitutional mandate to provide effective assistance of counsel to its clients. Though the roles of the prosecution and defense are admittedly different, the structure of the funding is different as well. District attorney offices are individually budgeted for higher staffing levels and are served by both their in-house administration and state-level administration for support. For example, state and local law enforcement conducts the initial investigation for the cases that the local district attorney may choose to charge. In addition, district attorney offices have in-house chief financial officers, human resources staff, and information technology support, combined with similar statewide resources and support provided by the Administrative Office of the District Attorney.



LOPD has 43 administrative staff dedicated to serving the 439 FTE and 150 contractors, while also auditing and monitoring invoicing by contract defenders. Administrative staff includes fiscal, human resources, information technology, and administrative support staff.

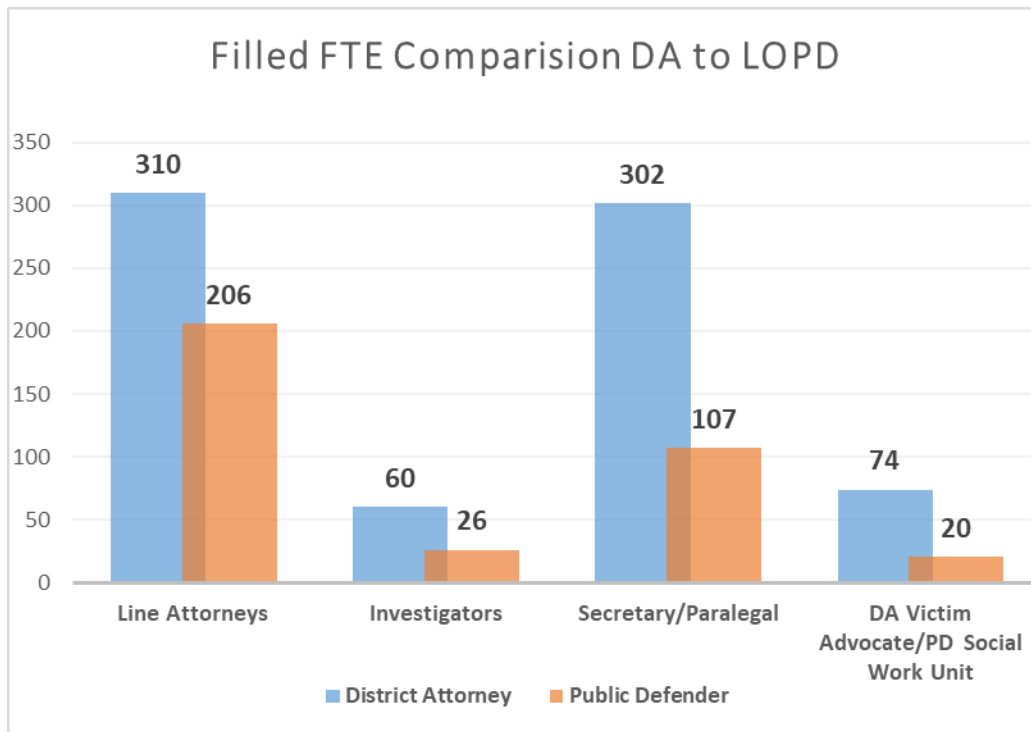
AODA and the district attorney's offices have a total of 223 "administrative staff." In addition, many district attorney offices have Deputy District Attorneys or other attorney supervisors that are not assigned cases, nor carry an active caseload as part of their duties. When compared to data compiled from the district attorney offices across the state, LOPD ratios are significantly lower than their indicated statewide average staffing ratios, as illustrated in the following charts and graphs.

Filled FTE*	DA	LOPD
Attorneys	310	206
Clerical	200	43
Investigators	60**	26
Paralegals/Specialists	102	64
Victim Advocates/Social Workers	74	20
IT	25	6
Fiscal	24	9

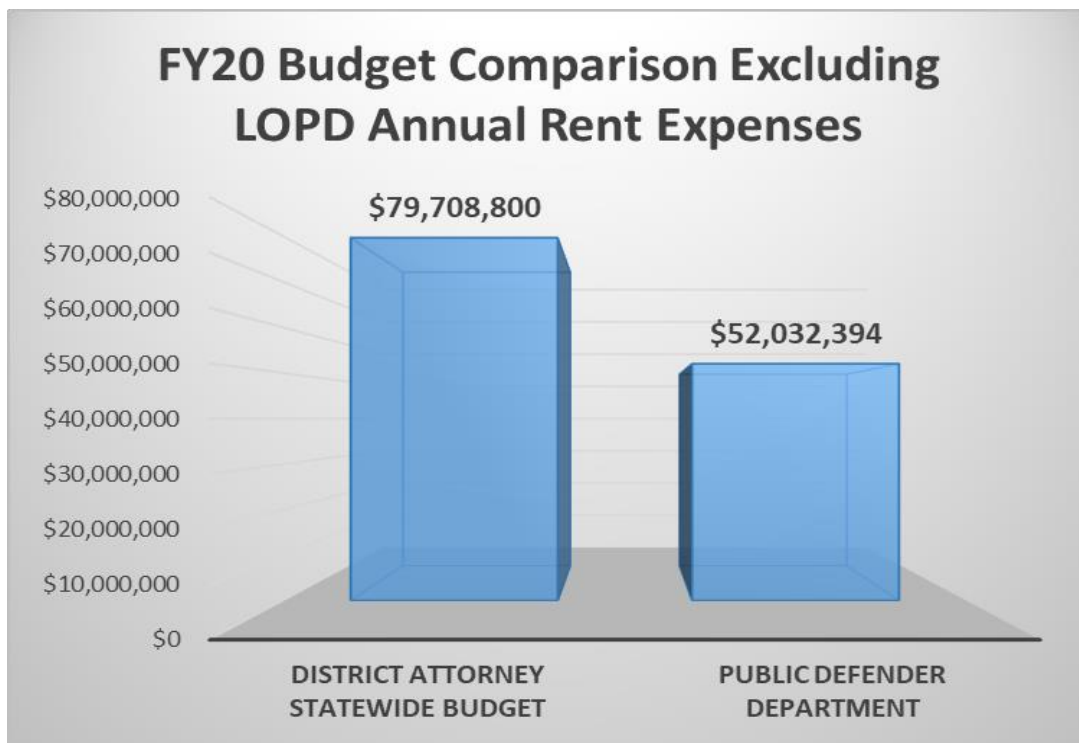
**DA filled FTE as of May 6, 2019 and LOPD filled FTE as of July 2, 2020.*

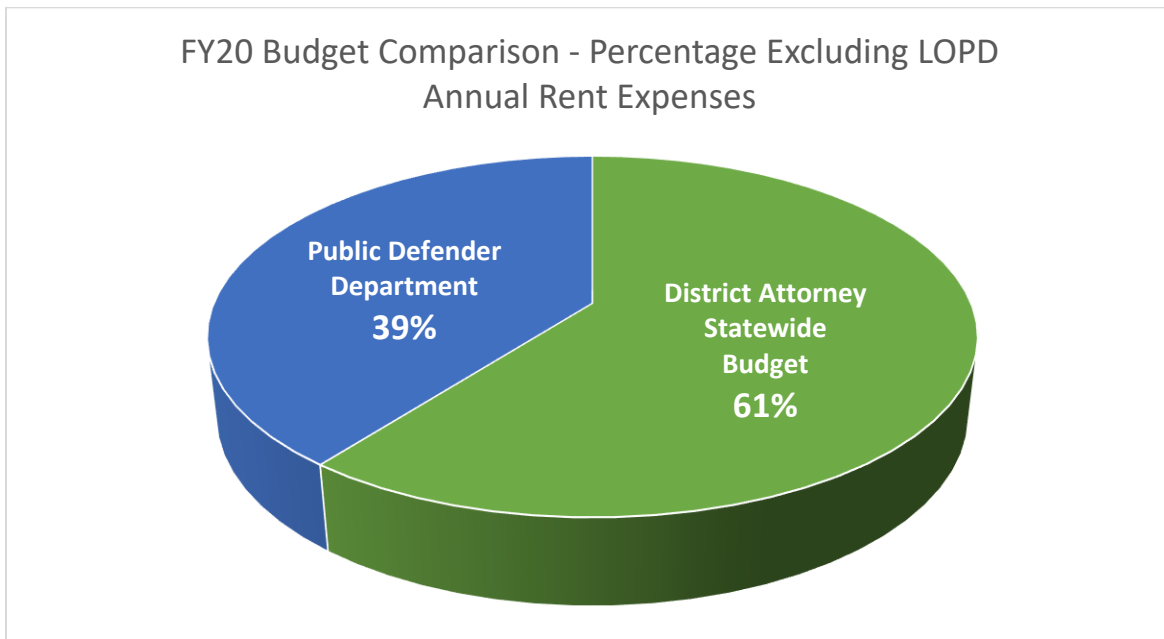
***This total does not include the resources provided by local and state law enforcement.*

LOPD continues to advocate for the legislature to increase funding necessary for LOPD to "catch up" with others in the system, especially the prosecution. The greater the gap between the two, the more harm to constitutional representation.



The funding gap is further exacerbated because LOPD is burdened with the additional expense of paying leases for its facilities with General Fund revenues, while the district attorney offices are provided and paid for by the counties. The following graph demonstrates how this additional expense depletes the LOPD budget and demonstrates the difference in the remaining funds dedicated to client services.





Innovative Recruitment and Retention Program

LOPD continues to fight to keep offices staffed to provide services to clients. Turnover is inevitable, however, it is exacerbated by the increased competition in the legal community for attorneys with criminal experience and significant challenges to recruiting in-house and contract attorneys to serve rural communities, combined with new challenges presented by COVID-19 while coordinating with new hires moving between states.

While LOPD has struggled with recruiting experienced attorneys, it has not settled for simply posting positions and hoping candidates will find us. Instead, LOPD has been proactive in targeting different groups of prospective candidates and has dedicated resources to contacting those candidates and actively recruiting them to join our team. As a result, LOPD has been able to reinvent our recruitment program over the last several years. However, retention of hires is critical and an ongoing struggle, especially for rural offices in Eddy, Lea, Curry, Chaves, Roosevelt, Lincoln, and Otero Counties. While LOPD adopted a new pay scale effective July 1, 2015, which was based upon the pay scale maintained by District Attorneys, LOPD still lacks adequate funding to fill positions at a competitive level. To attempt to address recruitment and retention issues, LOPD completed a Classification and Compensation Study in FY2017 and implemented the recommendations in FY2019.

In addition, LOPD created an innovative program that uses geographic pay differentials to reward the attorneys in our rural offices and acknowledge their willingness to serve New Mexico's rural communities. The differential is helpful with recruitment and retention as well. Following the LOPD example, during the last legislative session rural district attorney's offices requested funding from the legislature to implement the same program which was a shift from previous years when district attorneys had previously labeled the program as "a luxury."

LOPD has expanded its active recruitment of attorneys. This allows LOPD to proactively address the inevitable attrition of in-house attorneys and contract defenders in the “legal deserts” in New Mexico where there are few lawyers. Over the last two years, LOPD has pinpointed law schools with strong public interest programs and funding allocated for internships or externships. The goal is to develop pipelines by securing students dedicated to indigent defense for a summer externship. In addition, LOPD has shifted to focus recruitment on hiring law school students immediately prior to or during the beginning of their final year of law school. This early recruitment allows LOPD to secure top notch candidates, while allowing the best candidates to receive an offer long before their colleagues, which provides stability during their last year of law school and while studying for the bar exam. These new hires are “limited practitioners,” which means they have a legal education, but are not sworn into the bar and therefore unable to represent clients in court.



Deputy Chief Cydni Sanchez interviews limited practitioner candidates during the 2019 Equal Justice Works Conference and Career Fair.



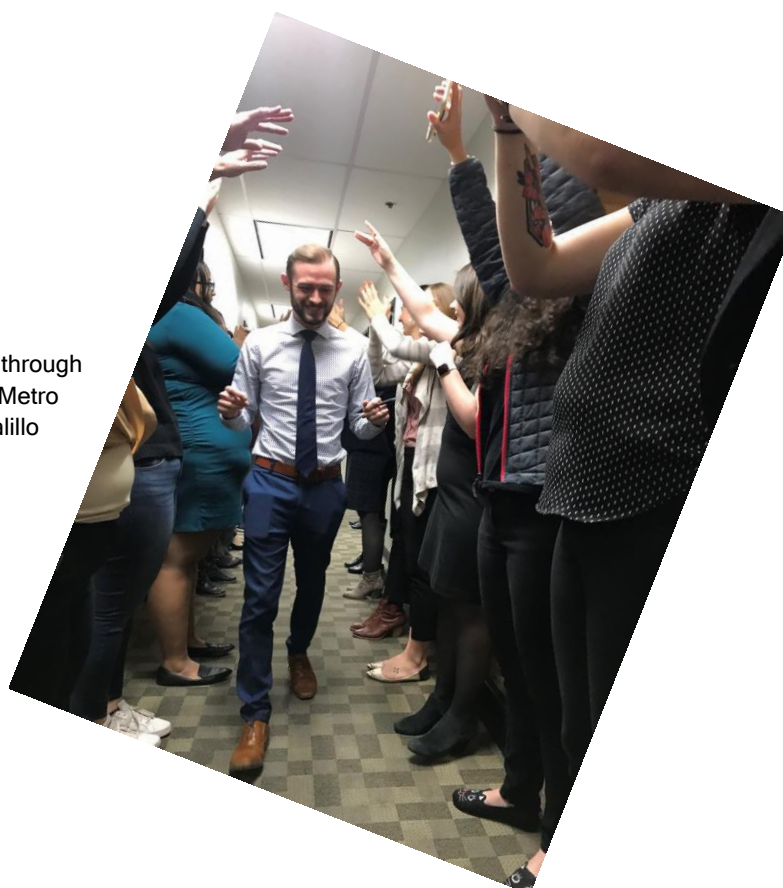
Abq Metro Managing Attorney Tonie Abeyta works with Javier Amaya to help recruit at the UNM School of Law Career Fair in early February.

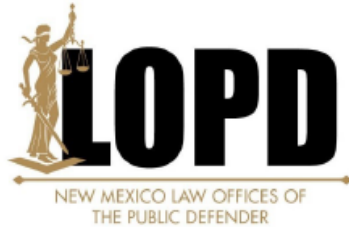
LOPD brings the limited practitioners onboard for training starting immediately after the bar exam. This time provides the department and the new hire between eight and ten weeks of training so that as soon as the limited practitioners are sworn into the bar, they can be assigned cases and represent clients in court. In FY2019, LOPD secured fourteen limited practitioners placed in five offices statewide. In FY2020, the program successfully expanded with twenty-five limited practitioners hired for seven LOPD offices.



FY2020 class of limited practitioners take a break from new attorney training to take a group photo.

New attorney, Cameron Payette, walks through the celebratory tunnel in Albuquerque's Metro Division following his first trial in Bernalillo County Metropolitan Court.





2020 ATTORNEY RECRUITMENT

LOPD hired 25 recent law school graduates to join the LOPD team in 2020.



LOPD hired 10 graduates from the University of New Mexico School of Law.

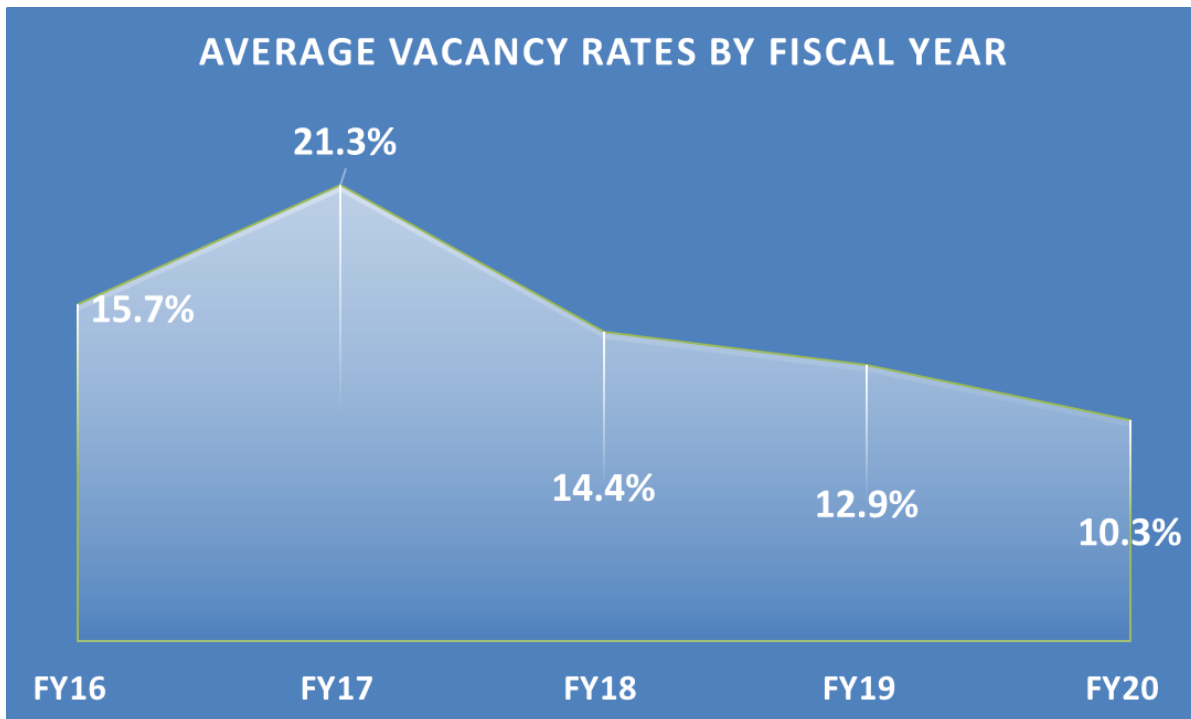
The 25 law school graduate hires come to LOPD from 11 different states.



The law school graduate hires represent 13 different law schools.

Innovative Hiring Program Results in Reduced Vacancy Rate

Due to proactive recruitment, such as the limited practitioner program and innovative placement of positions, LOPD has consistently reduced the vacancy rate since FY2017. LOPD has evaluated the hiring process to eliminate delay, proactively plan for anticipated retirements or resignations, and diligently hire new employees. As a result, in FY 2020 the lowest vacancy rate was 8.6%, compared to FY2019, when the lowest rate was 11.1%. The average vacancy rate in FY2019 was reduced to 12.9%. In FY2020, the average vacancy rate was reduced further to 10.3%.



The efforts to reduce vacancy rate and proactively plan for attorney losses is evident in the increase in average attorney FTE from 162.5 in FY2018 to 175.0 in FY2020. The increase in average attorney FTE also positively affects the number of cases assigned and assists LOPD in successfully meeting the established performance measure related to case assignments. The increased stability statewide has positively affected caseloads by reducing the number of reassigned cases and in turn reducing the average number of cases assigned to attorneys. It is important to emphasize that, although LOPD is helping to reduce the numbers, caseload numbers remain too high to provide effective assistance of counsel in all cases.

Shortage of Experienced Contract Defenders

Due to funding levels forcing meager compensation paid to LOPD contract defenders, LOPD has struggled to find and retain an adequate number of contractors to provide a constitutionally appropriate level of defense. This is especially true in Curry, Eddy, Lea, Lincoln, Luna, McKinley, Roosevelt, and San Juan counties.

The constitutional requirements and performance standards for attorneys apply equally to both contractor defenders and in-house attorneys. Unfortunately, contractors are often less able to meet these requirements because of lack of resources. Contractor defenders often receive less support due to having no support staff, including investigators, paralegals, social workers, and secretaries; whereas in-house attorneys have that support. Competition for attorneys with criminal experience impacts the defense of indigent clients in communities without local public defender offices.

The current base rate compensation for contract defenders is \$750 for first degree felonies (except capital crimes which are compensated at \$5,400), \$700 for second degree felonies, \$645 for third degree felonies, \$540 for fourth degree felonies, \$300 for juvenile cases, and \$300 for misdemeanor driving while intoxicated and domestic violence cases. Comparing these rates to the \$300 to \$400 per case paid in 1968 under the Indigent Defense Act, it becomes evident that inflation has devalued² the compensation rate dramatically over the past four decades.

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

The State of New Mexico pays contract lawyers in civil cases \$95 (for those with zero to two years of experience) to \$165 (for over ten years of experience) **per hour** to defend it through the Risk Management Division's contracts. Those hourly rates are laid out in the chart below from the Risk Management Division Request for Proposals for attorneys to consult and defend the Public Liability Fund.

**Risk Management Division Contract Lawyers
Standard Litigation/Assist/Consult Assignments**

Years Experience Practicing Law (from date of licensure)	Corresponding Hourly Rate
0 to 1.99 years	\$ 95.00
2 to 4.99 years	\$ 125.00
5 to 9.99 years	\$ 145.00
10+ years	\$165.00

² An inflation calculator shows 1968 dollars to be worth just over seven times 2017 dollars.

Those hourly rates provide compensation far higher than attorneys representing clients charged with first degree murder or cases that carry a sentence of life imprisonment. The civil contract lawyers defending the state are eligible to receive additional compensation for their paralegals in excess of the amount that even LOPDs most experienced contract lawyers receive for serious violent felony trials. By contrast, federal contract public defenders are paid an hourly rate of \$148.

Accordingly, the New Mexico Public Defender Commission has determined that the minimum possible amount to start compensating contract defenders should be \$85 per hour. This hourly rate would better provide for constitutionally effective indigent defense, ensure accountability through their billing invoices and achieve the goal of providing true legal services to each client as guaranteed under the New Mexico and United States Constitutions.

The contracts that went into effect starting November 2015 and through November 2020 have provided a mechanism for additional compensation for complex case representation, although funding to fully implement this mechanism is currently lacking. This mechanism is an interim step to address the inadequate compensation of contract defenders until a system to compensate contract counsel on an hourly basis for the actual work performed can be funded.

In May 2020 LOPD's Contract Counsel Legal Services division issued a Request for Proposals (RFP) to solicit proposals from private attorneys interested in contracting with LOPD to serve indigent clients in jurisdictions where LOPD does not have a district office and on conflict cases in districts housing local LOPD offices. Overall, there is a decrease in attorneys submitting proposals –106 in 2018 compared to 91 for the FY2020 RFP. Although some of the contractors are retiring, others did not resubmit proposals, preferring instead to concentrate on their more lucrative private practices. Others obtained employment with State or Federal agencies; including, but not limited to, the District Attorneys' Offices, or relocated. Despite increased advertising of contract work with LOPD through the RFP, it is becoming more difficult to recruit Contract Counsel, especially to the rural areas of New Mexico at the funded base rates.

Every fiscal year, the LOPD submits a Budget Request seeking additional funds to pay contract defenders an hourly rate in designated cases, compensate for complex case litigation and fund use of expert witnesses in complex cases. Paying hourly rates on serious cases and allowing for complex case compensation appears to be the only way to entice other attorneys to become involved and also for LOPD to ensure lawyers are compensated such to fulfill the State's constitutional requirements to provide zealous representation for indigent New Mexicans charged with crimes in rural New Mexico.

Necessary Support Staffing Levels

The New Mexico Sentencing Commission does an annual evaluation of staffing levels to determine the outstanding needs of LOPD in comparison to court case levels. According to the 2016 Sentencing Commission calculations, LOPD is currently short 107 attorneys and 73 support staff to adequately cover indigent defense in New Mexico. This calculation takes into account the 150 contractors currently representing on cases statewide. LOPD is seeking the addition of 15 FTE, which includes six attorneys and nine staff for FY2022.

New Mexico Public Defender Department Comparative Analysis of Actual FY2020 FTE Staffing Levels and the New Mexico Sentencing Commission Workload Study Recommendations*			
	FY2020 Filled Full Time Equivalents (FTE's)**	2016 Workload Study Recommendation*	<u>Deficiency</u> in Staffing Levels
Attorney	206	313	107
Attorney Support	153	226	73
Total Direct Client Services FTEs	359	539	180
Administrative Support***	46	n/a	n/a

* The New Mexico Sentencing Commission utilizes data from a 2007 comprehensive workload study and current case statistics in their annual update of LOPD's FTE needs. The above staffing recommendation is based on the New Mexico Sentencing Commission's 2016 update.

**FY2020 Filled Full Time Equivalents (FTE's) as of July 2, 2020.

***Administrative support FTE needs were excluded in the Sentencing Commission's workload study. The Department currently has 46 FTEs that are considered the administration or administrative support, not direct client services, including seven administrative positions that require law degrees (Chief Public Defender, four Deputy Chiefs, General Counsel, and Director of Training and Recruitment). Additional positions are necessary to fully implement the tasks that used to be performed by the Executive Branch (IT, Fiscal, HR) and properly oversee the Contract Counsel services, including auditing invoices.

Statewide Training and Education Program

LOPD's training and professional education program is designed to improve the quality of client representation while also meeting the evolving needs of employees. The program is developed and maintained by the Director of Training and Recruitment and a part-time staff employee. In FY2020, the department invested in providing employees training by various local and national experts on indigent defense, trial skills, forensics, social work, and leadership development. Prior to the COVID-19 pandemic, LOPD previously held an annual statewide conference where employees and contract defenders travel to Albuquerque for an in person conference, which provides continuing legal education for in-house attorneys and contract defenders as required by Supreme Court rules.

LOPD's investment in its employees and providing training, specifically in leadership and supervision development, has improved morale and improved on-going challenges with retention of non-attorney employees. In FY2020, thirty-four non-attorney staff employees left the department, which was a significant decrease from the forty-seven that departed in FY2019.



Albuquerque Felony Division team members pose for a picture after a potluck.

Implementation of Classification and Compensation Study

To attempt to address recruitment and retention issues, LOPD contracted with Kenning Consultants to complete a Classification and Compensation Study in FY2017. The purpose of the study was to develop a plan that would be specific to LOPD, in alignment with our mission and values, and would enable LOPD to attract, retain and reward the quantity and quality of employees needed to meet the LOPD mission while striking a balance between internal equity and external competitiveness.

As mentioned earlier, upon transitioning from the executive to the judicial branch in July 2015, LOPD adopted the District Attorney salary structure in order to be competitive with the District Attorney's office in each district through equivalent compensation. During the transition of LOPD from the executive branch, only those classifications that existed at the time of transition were built into the LOPD classification plan. This strategy prevented LOPD from modifying a classification or adding a classification to the agency plan.

All LOPD employees were asked to provide descriptions of their job duties. Statewide participation helped to ensure a complete study, rather than just a "sampling" from each job classification. Position Description Questionnaires (PDQ) were specifically designed by Kenning Consultants for LOPD employee responses. Four-hundred and four PDQs were returned and every single PDQ was reviewed by a committee composed of LOPD employees.

The committee identified the appropriate classification based on the job duties. The classification was ultimately matched up with a compensation level.

The compensation study conducted by Kenning Consultants included comparisons with the federal 10th Judicial Circuit Court of Appeals and the same eight states included in the executive branch study. Similar jobs were compared to those within public defender organizations of similar size in Arizona, Colorado, Kansas, Oklahoma, Utah, Wyoming, Texas, and Nevada. A recommended grade and salary structure was provided by Kenning Consulting, which LOPD adopted in FY2019. The plan includes appropriately placing employees within their pay ranges based on experience, education and other factors, in accordance with NMAC 10.12.4, which provides a uniform system of pay for LOPD employees. The study gives LOPD a method for making those adjustments, as budget allows.

COMMUNITY ENGAGEMENT



Attorney Ben Smith speaks at one of seven public defender marches across the state in support of Black lives and the fight against racial inequity in the criminal justice system.

PUBLIC DEFENDER MARCH

In June, hundreds of LOPD employees and supporters across the state joined in nationwide coordinated public defender marches against systemic racism and injustice and in support of Black Lives Matter issues.

The marches and moment launched community meetings and engagement and fueled a push for legislative action on LOPD-backed body cameras and other measures.



Ruidoso team members show support for Black lives and the fight against racial inequity in the criminal justice system.

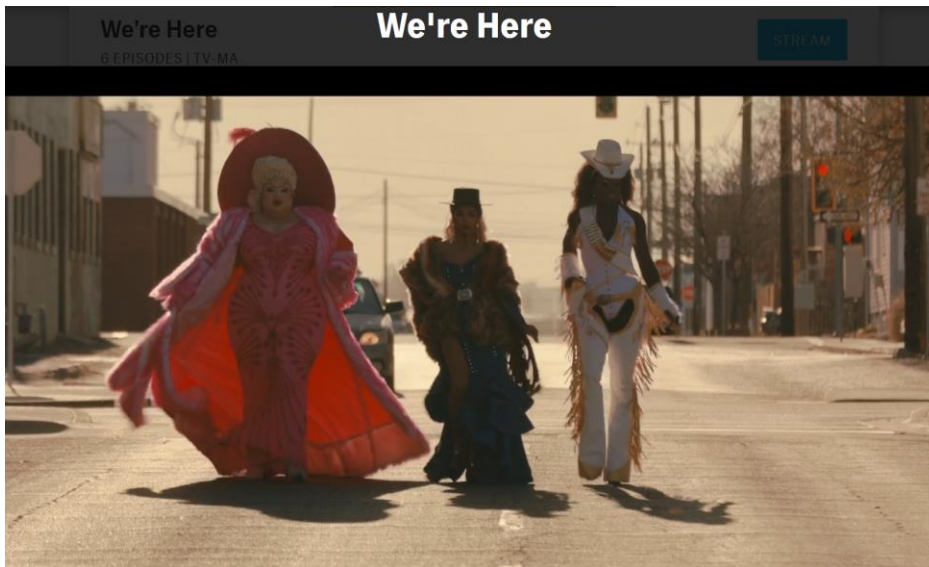


Roswell, left, and Santa Fe teams join in solidarity with the nationwide marches.



We Are Part of Our Communities

A team from the Las Cruces office helped build some walls, roofs and a few location pads at Community of Hope in Las Cruces. "This is Camp Hope, also referred to as 'tent city', where the homeless and near homeless live, many of them our former and present clients," said Kris Knutson, district defender for Las Cruces.



LOPD attorney Nicole Hall in Aztec.

An "unscripted series" show slated for HBO visited the Aztec office to feature LOPD attorney Nicole Hall and her community work in Aztec. The show's producer said they learned about Hall's LGBTQ community work and wanted to connect with her. The series aired on HBO in Spring 2020.

"Filming was so much fun. Everyone we met was so nice and made me feel really comfortable sharing my story. They did film my first ever jury trial, which I think made me even more nervous," Hall said. "I feel so lucky that I was chosen to be featured in the series and hope that my story inspires people all over the world."



Carlsbad Managing Attorney Nate Banks speaks at the 2020 MLK Jr. Day celebration in Carlsbad.



Deirdre Ewing, district defender in the 5th judicial District, joined Banks, along with Chief Public Defender Bennett Baur, far right.

Carlsbad Managing Attorney Nate Banks, at the invitation of the mayor of Carlsbad, was the keynote speaker for the Carlsbad Martin Luther King, Jr. Scholarship Fund Banquet in January 2020. Fifth District Defender Deirdre Ewing and Chief Ben Baur attended. "Deirdre and I were proud to attend the event to support Nate and to be inspired by him - and to see how much he inspires the community of Carlsbad," Baur said.



Debra Lautenschlager, Roswell's managing attorney, left and Deirdre Ewing, 5th District Defender, right, spoke at the Chaves County Bar Association lunch in February 2020, sharing LOPD's mission, the workload study and the need for resources behind it, and our place in the larger community. The duo also talked about changes in the direction of the office over the last few years, including our taking up representation at jail arraignments and felony first appearances, our work to treat our clients holistically and get them connected with services, and our work with the local mental health court.



The Department launched a social media presence to connect with clients and the broader criminal justice community.

FY2022 GOALS AND OBJECTIVES

- I. GOAL/OBJECTIVE: Strengthen statewide network of Public Defender Attorneys and Contract Defenders to improve rural representation to ensure effective indigent defense.
 - a. Action Step: Recruit and retain in-house attorneys, social workers, investigators, and support staff by expanding current innovative and proactive recruitment program targeting in-house employees statewide with a commitment to diversity and inclusion. Current recruitment efforts have been focused on attorneys. Expanding those efforts to include prospective employees for the social work unit, investigators, and other support staff positions will improve retention and decrease vacancy rate.
 - i. LOPD seeks to build a team of professionals who support the mission of the organization with a commitment to the long-term benefit of the protection of constitutional rights.
 - ii. LOPD will work to establish and secure funding to provide a rate of equitable and competitive pay, increased levels of accountability, training and performance for attorneys and staff.
 - iii. LOPD is committed to recruiting a diverse and inclusive workforce by:
 1. Working to create pipelines with law schools with strong public interest or criminal defense programming, and
 2. Recruit diverse employees that reflect the populations LOPD represents; specifically, Spanish speaking and employees of Black and Native American backgrounds.
 - b. Action Step: Expand pool of contract defenders by addressing inadequate compensation for contract counsel. LOPD is advocating for expansion of the hourly rate pilot project and additional funding for complex case litigation.
 - i. Ensure indigent clients receive a constitutionally adequate public defense by advocating for funding to address the existing low base rate, as an hourly rate contract is more likely to garner interest from skilled criminal defense attorneys in the private sector. With appropriate level of attorney representation and reduction of unnecessary delays, resolution of cases will be timely and efficient; with increased efficiency, unnecessary delays will be reduced; with more timely resolution of cases, court backlogs are eliminated and jail overcrowding is reduced - and justice is served.
 - ii. In FY2021, LOPD will continue to analyze data from the hourly rate pilot project to determine how best to proceed. LOPD will analyze the data from these cases to project future funding requirements to further expand the pilot program.
 - iii. LOPD will engage the Public Defender Commission and the criminal defense bar to advocate for statewide implementation of an hourly rate for contract counsel.

- c. Action Step: Continue investing in the development of LOPD Training Program.
 - i. Improve management and operations to invest in employee development including diversity and self-care.
 - ii. LOPD will continue to sponsor attorney and support staff managers to attend regional and national management training courses, if the budget allows. Sponsored participants are then required to conduct internal trainings and briefings on learned management skills.
 - iii. LOPD will implement programs/opportunities/trainings with a focus on diversity and inclusion as well as self-care and wellbeing.
 - iv. Training and Recruitment Director will coordinate with LOPD's District Defenders and regional managers to designate attorneys to participate in trainings.
 - v. In FY2021, specialized training courses will be provided by in-house senior attorneys, and other local and national training programs contracted by LOPD.
 - vi. Training and Recruitment Director will continue to conduct an annual training for new attorney hires recently sworn into the New Mexico Bar. The trainings will occur weekly. Each week the training will focus on a topic including on-line course work followed by facilitated discussions.
 - vii. In FY2021, the Training and Recruitment Director will identify, organize, and promote quality trainings to ensure LOPD employees are offered opportunities to fulfill their professional licensure requirements.
- d. Action Step: Evaluate processes and procedures for efficient management of scarce LOPD budgetary and personnel resources.
 - i. Since FY2017, LOPD continues to evaluate statewide eligibility, data entry, and procedures to standardize processing within each district office which has increased accuracy in data reporting and improved efficiency.
 - ii. Since FY2015, LOPD has regularly assessed client service needs in our regional offices and divisions and has reallocated positions and human resources as needed. Factors such as caseloads and economic and population changes are considered in long-term trends.

II. GOAL/OBJECTIVE: Reduce recidivism and support community needs by positively impacting public safety.

- a. Action Step: Dedicate resources to equip LOPD social work unit and other front-line staff with essential training to work with clients to address underlying issues impacting their interaction with the criminal justice system.
- b. Action Step: Educate legislators and criminal justice partners about the limited mental health and substances abuse treatment resources statewide.
- c. Action Step: Advocate for additional support and resources to allow clients to address underlying issues and become contributing members of society.

- d. Action Step: Continue leadership and active involvement in criminal justice reforms.
 - i. LOPD will continue to collaborate with District Attorneys and courts statewide to create and utilize more diversion programs, keeping low risk offenders out of the criminal justice system and reducing jail and prison populations.
 - ii. LOPD continues to advocate for reforms in the criminal justice system which would allow LOPD to work more efficiently and effectively.
 - iii. Participate in community policy conversations about criminal justice reform and garner community participation.

III. GOAL/OBJECTIVE: Attain parity in staffing by bringing Public Defender staffing levels similar to those of the District Attorneys.

- a. Action Step: Obtain funding in FY2022 budget request to hire an additional six attorneys and nine staff. Additional staff and attorney positions would be distributed statewide to address the most critical areas of need, including adequate coverage of southern and eastern New Mexico, social work unit services, and auditing hourly rate invoices.
- b. Action Step: Educate Legislators and criminal justice partners about the disparity in staffing.
 - i. Compile reliable and accurate comparisons between district attorney offices, administrative office of the district attorney, and LOPD.
 - ii. Increase awareness of detrimental effects in our communities caused by the disparity.
- c. Action Step: LOPD will seek advocacy assistance from the New Mexico Public Defender Commission and the criminal defense bar to advocate support from the Legislature and Executive for an additional six attorneys and 9 staff for FY2022.

SUMMARY OF PERFORMANCE MEASURES

FY2022 Performance Measures

1. Number of alternative sentencing treatment placements in felony, misdemeanor, and juvenile cases.
2. Average cases assigned to attorneys yearly (*reported staff and contract attorney assignments in each county*).
3. Average time to case disposition (*reported for staff and contract attorneys in each county*) (measured in months at close of case).
4. Percent of felony cases resulting in a reduction of the original formally filed charges.
5. Percent of juvenile cases resulting in a reduction of the original formally filed charges.
6. Percent of misdemeanor cases resulting in a reduction of the original formally filed charges.
7. Percent of total cases taken by contract attorneys reported by county.
8. Number of cases dismissed in felony, misdemeanor, and juvenile cases.*
9. Number of cases closed by attorneys.*
10. Average number of cases opened by district (*reported for staff attorneys by county*).*
11. Difference between the number of cases opened and closed by office.*

* *Performance Measures added in FY2020.*