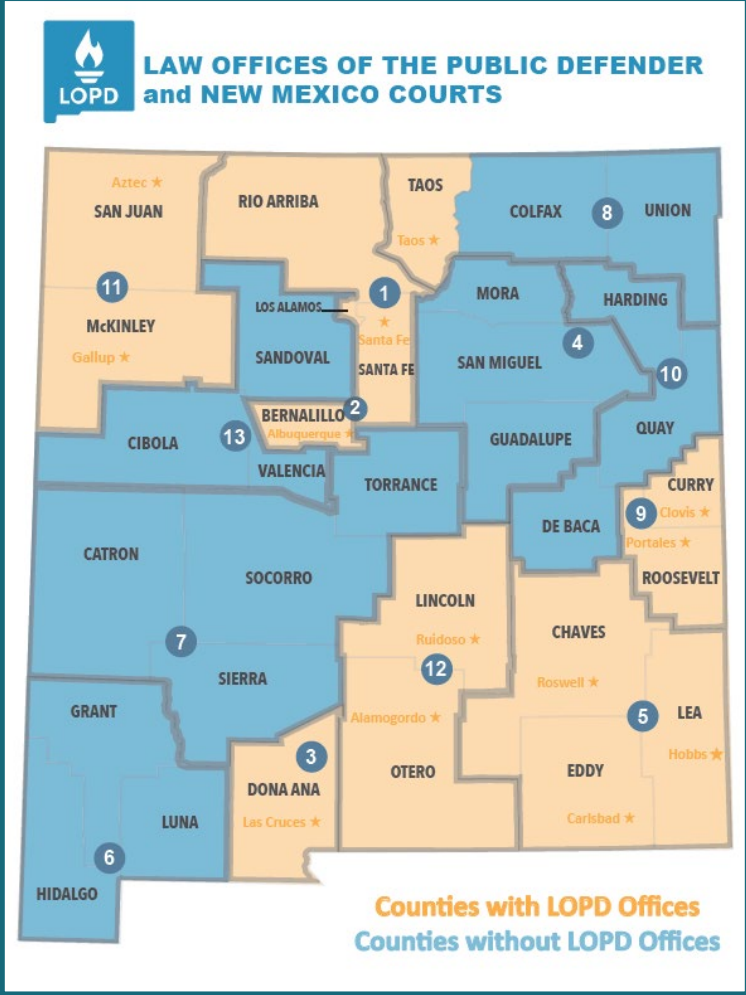


Transition Plan: Contractor Hourly Rate Model

NEW MEXICO LAW OFFICES OF THE PUBLIC DEFENDER



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PREPARED BY MOSS ADAMS LLP



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I. EXECUTIVE SUMMARY

The public defense system in New Mexico provides criminal legal representation to individuals facing possible incarceration and unable to afford an attorney, ensuring their right to counsel as mandated by the federal and New Mexico constitutions. The Law Offices of the Public Defender (LOPD) manages this responsibility, administering 13 offices across the state and contracting with private attorneys in areas without a staffed LOPD office or when conflicts arise in districts with an office. LOPD's contract attorneys handle nearly 34% of the state's public defense cases.

The reliance on a base rate payment structure¹ for contract attorneys in New Mexico raises critical ethical concerns and exacerbates challenges in recruitment, retention, and case management, particularly in underserved rural areas. Base rate payment models create a conflict of interest as they can incentivize attorneys to minimize their efforts to maximize profit, which could lead to less favorable outcomes for clients. Contract attorneys are paid a base rate per case at a scale below national and state contemporaries, leading to challenges in recruiting and retaining qualified contractors — especially in rural New Mexico where there are few, and in some places zero, residing attorneys. Moreover, unlike LOPD staff attorneys who receive benefits and do not pay office expenses, LOPD contract attorneys must manage their pay and overhead—office space, equipment, legal tools, and support staff—forcing them to confront the tension between how many cases they need to handle and how many cases they can handle effectively.

To address these issues, there is a growing movement — both within New Mexico and across the U.S. — to transition to an hourly rate model for indigent defense. The hourly rate model compensates contracted attorneys based on the actual time spent working on each case, promoting thorough legal representation and aligning payment with the complexity and effort required. The most successful hourly rate models are those that set rates based on comparisons to the labor market and are adjusted on a periodic basis. In recent years, LOPD has struggled to retain and recruit contract attorneys. To be successful, the hourly rate model will need to reflect the current attorney labor market and be updated and adjusted regularly. LOPD's ability to maintain a competitive hourly rate sufficient to cover both income and overhead costs will impact its ability to recruit and retain contract attorneys, and therefore the ability to meet caseload demands. This model also ensures fair compensation, eliminates financial conflicts of interest, and aligns with best practices recommended by the American Bar Association and other legal authorities.

For more than 10 years, LOPD has explored alternatives to base rate pay, including hourly rate pilot programs and complex litigation compensation, which offers additional pay for documented work on difficult cases. However, the majority of the state's 95 contract attorneys continue to operate predominantly on the base rate pay structure.

This report outlines the recommended steps for a transition to hourly pay for contractors in New Mexico, centering the constitutional right to an adequate defense and addressing the concerns of both LOPD and contract attorneys. It anticipates a five-step transition process that would span 7.5 years. Additionally, this report estimates a total cost to implement the hourly rate plan across all

¹For many years, LOPD contract lawyers were paid a flat fee per case. In 2016, LOPD introduced complex litigation compensation, which allows attorneys to apply for additional compensation in cases requiring significant work. With complex litigation compensation, the former flat fee rates became base rates. Attorneys are now paid the base rate unless and until they apply for complex litigation compensation.



phases at approximately \$123.6 million, almost all of which would be in addition to LOPD's annual base budget, which in FY 2024 was about \$77.1 million. This plan acknowledges additional administrative burden on LOPD's current organization and the creation of additional administrative structures for the appropriate oversight of an hourly rate model.

This plan represents a long-term vision for transforming public defense in New Mexico, fostering a more equitable and effective system that upholds the fundamental rights of all residents. By offering more competitive and fair compensation for attorney work by adopting an hourly rate model, LOPD may improve recruitment and retention of qualified attorneys, particularly in rural areas. Most importantly, such a transition would align LOPD with national best practices, ensuring that public defense services are both ethically sound and financially transparent.



II. INTRODUCTION

New Mexico enacted the New Mexico Public Defender Act in 1973 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 established by Section 39 of the New Mexico Constitution and 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.”² LOPD, in turn, is responsible for establishing and maintaining the public defense system for all 13 judicial districts in New Mexico. A judicial district overview is provided in [Appendix C](#).

LOPD attorneys provide public defense representation and services to clients in eight judicial districts. In the five remaining judicial districts, LOPD contracts with private attorneys who solely provide public defense. LOPD managed a \$77.1 million base budget in FY24. It employs 500 New Mexicans, including 240 in-house staff attorneys and 260 support staff, including investigators, social workers, secretaries and paralegals, and administrators in addition to its own IT, Fiscal, HR and General Counsel functions. It operates 13 offices across the state including eight trial offices, three statewide units, and Contract Counsel Legal Services (CCLS). In FY24, LOPD staff attorneys defended 56,162 cases — not including cases assigned to contractor attorneys through CCLS.

CCLS handles cases in areas where there is not an LOPD staffed office and cases in which there is a legal conflict of interest, such as co-defendants. The unit is responsible for monitoring and managing the approximately 95 attorneys who in FY24 contracted with LOPD. In FY24, contract attorneys were assigned 29,218 cases — approximately 34% of all cases defended by LOPD — with most of those cases occurring in areas without LOPD offices. While CCLS is budgeted through LOPD, it is administratively separate, including its own technology and records system and leadership. In FY24, CCLS was staffed with 10 employees. The deputy chief overseeing CCLS reports to the Chief Public Defender. In FY24, CCLS oversaw the payment of approximately \$15.7 million to contract attorneys for their services.

Contract attorneys are private attorneys who operate their own business or are part of a firm located in New Mexico. They must apply through a Request for Proposal (RFP) process and are vetted. They agree to accept the base pay rate per case described in the chart below. The fee, which must cover not only the contractor's pay, but also their overhead – such as office rental, computer, telephone, case management software, discovery storage, legal research tools, admin support, paralegal salary and benefits, etc., – is generally paid upon assignment at the outset of the case. The amount of work conducted by the attorney is not typically reported to or monitored by CCLS. The attorney is paid the base amount regardless of the amount of work done on a case. Depending on the type of case, contractors can apply for complex litigation compensation. CCLS launched this program in 2016 as a type of hourly rate pilot program. The program allows attorneys to apply for compensation above the base rate in cases requiring significant work. Compensation is based on a matrix designed by LOPD, including factors such as the number of hours expended and the length of the trial.

² New Mexico Constitution, available at <https://www.sos.nm.gov/about-new-mexico/publications/nm-constitution/>



Base pay rates apply to every case, regardless of the hours and tasks worked on the case. The following chart calculates a contract attorney's hourly compensation based on the American Bar Association's (ABA) New Mexico Workload Study, which estimates the average hours an attorney should spend to provide reasonable and effective assistance of counsel. The chart demonstrates that under the standards and paid the base rate, contractors are paid close to New Mexico's minimum wage. The more serious and complex the case, the more required hours—and the less the attorney earns per hour.

NEW MEXICO LOPD CASES ASSIGNED TO CONTRACT ATTORNEYS			
Case Type	# of Cases Assigned	2023 Base Rate	Equivalent Hourly Rate (2022) ³
High-Level Felony	164	\$6,500	\$13.81
1st Degree Felony	198	\$950	\$14.80
2nd Degree Felony	1,017	\$930	\$13.81
3rd Degree Felony	2,513	\$900	\$12.73
4th Degree Felony	7,319	\$780	\$16.60
Juvenile	556	\$420	\$0.79 - \$18.94*
Misdemeanor DWI/DV	3,838	\$360	\$13.82
Misdemeanor (Other)	5,686	\$220	\$23.68

* This rate ranges due to case severity; the more severe the case, the more hours worked and the less the attorney is paid per hour.

Further, because contract attorneys do not report work conducted to earn the base rate, the base rate system reduces the ability to monitor case status, complexity, and attorney performance, as compared to the oversight possible in hourly rate system, which requires reporting of all work completed. This reduced oversight raises serious concerns shared by public defense agencies, legal ethics bodies, and courts across the country. Moreover, there is an inherent conflict of interest in base rate structures: doing additional case work might be in the best interest of the client, but not in the best financial interest of the lawyer. The ABA strongly advises against flat fee payment structures, stating, "Counsel should not be paid on a flat fee basis, as such payment structures reward counsel for doing as little work as possible." This sentiment was echoed in the case of *Wilbur v. Mt. Vernon*, where the court found that a flat fee contract "left the defenders compensated at such a paltry level that even a brief meeting at the outset of the representation would likely make the venture unprofitable."

Consider the following chart showing the impact of the base rate in three low-level felony case scenarios (\$780/case).

³ Based on the New Mexico Workload Study Delphi panel results and the 2019 base rates.



THREE SIMPLE LOW-LEVEL FELONY CASE SCENARIOS: DESCRIPTION OF WORK AND OUTCOME

	CASE A	CASE B	CASE C
Case Type and Rate	<ul style="list-style-type: none"> Case Type: Low-Level Felony Base wage: \$780 	<ul style="list-style-type: none"> Case Type: Low-Level Felony Base wage: \$780 	<ul style="list-style-type: none"> Case Type: Low-Level Felony Base wage: \$780
Attorney Work Conducted	<ul style="list-style-type: none"> Discusses prosecutor plea offer in court with client before initial court appearance; client accepts (.25 hours) Attends the client's initial court appearance; reports acceptance of plea offer; plea colloquy (.5 hours) 	<ul style="list-style-type: none"> Attends the client's initial court appearance (.5 hours) Consults with the client to gather details about what might have happened (.5 hours) Conducts research, reviews discovery materials including body camera video (2.0 hours), Canvasses for witnesses; sets up and conducts witness interviews; investigates availability of camera footage (4.0 hours), Investigates client background; explores potential programs for alternative resolutions with available space (1.5 hours) Calls with the prosecutor to negotiate sentencing (.5 hours) Visit client in jail; Discuss potential resolutions with the client (1.0 hours) Attends a court appearance where the plea is accepted; plea colloquy (.5 hours) 	<ul style="list-style-type: none"> Attends the client's initial court appearance (.5 hours) Consults with the client to gather details about what might have happened (.5 hours) Conducts research, reviews discovery materials including body camera video (2.0 hours), Canvasses for witnesses; sets up and conducts witness interviews; investigates availability of camera footage (4.0 hours), Investigates client background; explores potential programs for alternative resolutions with available space (1.5 hours) Calls with the prosecutor to negotiate sentencing (.5 hours) Visit client in jail; Discuss potential resolutions with the client, client refuses (1.0 hours) Discovery motions; records subpoenas (1.5 hours) Court status hearings x3 (1.5 hours) Additional case research and investigation in preparation for possible trial (5.0 hours) Prep for voir dire and trial (6 hours) Visit client in jail; Discuss trial strategy; additional resolution discussion (1.5 hours)



	CASE A	CASE B	CASE C
			<ul style="list-style-type: none">Attends final trial readiness hearing where plea deal is accepted; plea colloquy (1.0 hour)
Total Attorney Time	.75 hours	10.5 hours	26.5 hours
Effective Hourly Rate	\$1,040 per hour	\$74.29 per hour	\$29.43 per hour

Several states across the U.S. are transitioning to an hourly rate model for indigent defense contracts. This shift is driven by a recognition that only hourly rates ensure fair compensation and prevent financial conflicts of interest. Jurisdictions using hourly rates include Arkansas, Hawaii, Iowa, Maine, Maryland, Massachusetts, Oregon, Tennessee, West Virginia, and Wyoming. Idaho prohibits indigent defense contracts that charge or pay a single fixed fee for attorney services and expenses. The Michigan Indigent Defense Commission has banned contracts that present financial disincentives to the attorney’s obligation to provide competent legal services. Most recently, Colorado, with its House Bill 1437, has joined this movement by restricting the use of flat fees.

For years, LOPD has endeavored to move away from base rates. More than 10 years ago, LOPD created its first hourly rate pilot program, in which attorneys would document the work conducted and be paid accordingly. The most recent hourly rate pilot program was authorized in 2019, when the NM legislature authorized a maximum of \$2 million for the pilot program. These funds were a part of — and not in addition to — LOPD’s total budget. Progress on this pilot was interrupted by the COVID-19 pandemic.

In light of the growing national awareness of the ethical concerns with base rate pay, as well as the increased recruitment challenges for contract attorneys, LOPD engaged Moss Adams LLP (Moss Adams), and Malia Brink, a national expert on public defense standards and structure, to assist with the development of a multi-year plan and estimated cost to transition from base rates to an hourly wage model. This plan aims to lay out the steps necessary for a successful transition to hourly pay for contract counsel as well as address the primary concerns of LOPD and contract attorneys in effectuating this transition.



III. PROJECT OVERVIEW

A. METHODOLOGY AND SCOPE

This engagement was performed in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accounts, as outlined in our Statement of Work dated February 27, 2024.

LOPD engaged Moss Adams to review historical data on caseloads and contract attorney FTE using The New Mexico Project Report issued by Moss Adams/ABA and the subsequent 5-Year Resource Plan issued by Moss Adams. This engagement was conducted between March and August 2024. It is intended solely for the use of LOPD and may not be provided to, used, or relied upon by any third parties. The project analysis design was organized into the following four phases:

- **Project Startup and Management:** This phase consists of collaborative project planning with LOPD management, including what documents will be reviewed, what data will be compiled, who will be interviewed, when and how results will be shared, and how we'll report on project statuses.
- **Fact Finding:** Activities in this phase aim to collect qualitative and quantitative information to outline the current state and inform the development of the transition plan. Activities included:
 - Document review
 - Interviews with LOPD staff, LOPD contract attorneys, and national organizations, including the Massachusetts Committee for Public Counsel Services
 - Compensation benchmarking to inform the hourly wage evaluation
- **Analysis:** Based on information gathered during fact finding, we developed a preliminary outline for the transition plan and evaluated the practicality of timing, budget, and impact to contract attorneys and LOPD staff.
- **Reporting:** We prepared and presented the draft plan for review to LOPD management. Based on feedback, we updated the plan before finalization.

This study assesses and provides the following:

- Recommendations on a phased approach to convert from contract attorney base rates to hourly rates
- Realistic timeframes to fully phase from base rates
- Funding needed each fiscal year to phase from base rates to hourly rates
- Projected number of contract attorneys needed to provide effective assistance of counsel
- Long-term funding required to fully support the conversion

B. PHASE, COST, TIMELINE SUMMARY

Transition planning will follow a five-phase approach to address the preparation and reasonable implementation to support the move from its current base rate structure to hourly rates. The final sixth phase outlines the activities to maintain and continuously improve the hourly rate model.

This plan outlines a structured approach for transitioning to an hourly wage contract model, ensuring a smooth and comprehensive shift from the current base rate system.



- **Phase I: Preparation** focuses on establishing the necessary policies, systems, and workforce over an 18-month period. This phase would involve setting up the infrastructure without directly impacting contract attorneys or cases, laying the groundwork for a successful transition.
- **Phase II: Pilot Program** recommends selecting a group of attorneys from the 5th Judicial District to participate in an 18-month pilot. This pilot would allow for real-world data collection and refinement of processes, providing valuable insights for the broader implementation.
- **Phase III: Group 1** transitions approximately 40 attorneys handling high-level felony, habeas, and appellate cases to the hourly wage model.
- **Phase IV: Group 2** extends the transition to include all other felony and juvenile cases, involving approximately 100 attorneys and 12,000 cases.
- **Phase V: Group 3** transitions the remaining contract attorneys, focusing on misdemeanor cases. This phase would likely involve the conversion of about 10,000 cases.
- **Phase VI: Ongoing Management** outlines the practices to ensure continuous oversight and adjustments following the transition. This phase would address compliance, training, and periodic reviews of the hourly wage structure, ensuring the model remains effective and sustainable.

This phased approach is designed to facilitate a smooth transition, minimize disruption, and ensure that the hourly wage contract model is implemented effectively for both LOPD and contract attorneys across the state. It is projected to have a significant budgetary impact, with estimated total costs outlined for each phase based on 2023 case assignment data.

The transition to an hourly compensation model, using a \$150 hourly rate⁴, reveals substantial costs across different case types, totaling \$123.6 million by Phase V. This budget estimate would be an addition to the LOPD general budget. Additional costs are anticipated during the preparation and pilot phases, which are not fully captured in the initial estimates. Cost considerations for the preparation phase are captured in [Phase I: Preparation](#), and for the pilot program in [Phase II: Pilot](#).

It should also be expected that the actual costs for each phase of the transition will vary. Advancements in technology and the presence of non-attorney case-support personnel have fundamentally impacted attorney workloads. For example, advancements in technology such as DNA forensics, body camera footage, virtual meetings, and the application of artificial intelligence (AI) all affect the amount of time an attorney spends on a case. Some advancements have led to increased attorney hours, while others led to time savings.

The presence of non-attorney case-support personnel such as paralegals, investigators, sentencing mitigation specialists, and administrative support can also impact attorney workloads and total costs. When modeled in other studies, as much as 20% of attorney time was able to be shifted to non-attorney case-support personnel. As these individuals often bill at a lower rate than attorneys, in an hourly model this can lead to cost savings, and greater efficiency.

Phases I-V of the transition are planned to have an 18-month rollout, for a total transition timeline of 7.5 years. The extended timeline allows for thorough implementation and adjustments at each stage, ensuring the transition is both effective and sustainable. This also enables the state to effectively manage the increased costs of the hourly rate model.

⁴ Further discussion of the how the rate is established and the importance of regularly reviewing and updating the rate is captured in [Section C: Determine Contractor Hourly Rates](#).



IV. PHASE I: PREPARATION

CATEGORY	DESCRIPTION
Purpose	To ensure LOPD has the appropriate policies, staffing, systems, and processes in place to support the transition to an hourly wage contract model
Timeline	18 months
Estimated Number of Contract Attorneys Impacted	None
Milestones	<ul style="list-style-type: none">• Conduct lobbying efforts to gain legislative support• Review and update hourly rates• Conduct a gap analysis to determine the policies and procedures that need to be updated and those that need to be developed• Conduct a study to establish expected hour ranges (minimums and maximums) by case type• Prioritize updates and development of new policies and procedures as well as standards and practice expectations, including training guides, how-tos, or other materials to help LOPD employees and contract attorneys• Create a communication and training plan for LOPD employees and contract attorneys• Evaluate systems and identify needed updates or technology gaps• Update roles and responsibilities for LOPD employees• Develop a workforce plan to hire LOPD employees to support the hourly wage model incrementally• Update contract templates• Submit the appropriations request

A. ORGANIZATION STRUCTURE AND STAFFING

Organizational Structure and Staffing Assessment

As part of the transition to an hourly wage model, it is recommended that LOPD conduct a thorough assessment of its current organizational structure and staffing.

Understanding the current state of LOPD's current workforce is an important step to identifying gaps and future needs, including potential changes to roles, new positions that may need to be created, or existing positions that may need to be restructured. The insights gathered from this assessment will be instrumental in developing a comprehensive workforce plan to outline the actions LOPD will take to ensure it has the right people in the right places at the right times to meet objectives.

Based on the scope and structure of an organization, assessment key activities can include:

- **Job Description Review:** This involves examining current job descriptions to ensure they accurately reflect the roles, responsibilities, and requirements of each position. This can help identify any gaps or redundancies in roles and responsibilities.



- **Span of Control Analysis:** This involves assessing the number of employees that each manager supervises. It helps determine whether managers have too many or too few direct reports, which can impact efficiency and effectiveness.
- **Training Needs Assessment:** This involves identifying the skills and knowledge that employees need to perform their jobs effectively and determining whether current training programs are meeting these needs.
- **Process Evaluation:** This involves reviewing LOPD's processes to identify any inefficiencies or areas for improvement. This can include everything from decision-making processes to workflow processes.
- **Resource Allocation Review:** This involves assessing how resources, including personnel, are allocated across LOPD to ensure they are being used effectively and efficiently.

[Appendix A](#) includes an overview of divisions within LOPD that are likely to be impacted by the transition.

Workforce Plan

A multi-year workforce plan is a strategic document that outlines LOPD's staffing needs over the next five years. This plan includes an assessment of the current workforce, projections for future staffing needs based on the new model, and strategies for recruitment, development, and retention of staff. It may also include plans for restructuring or redefining roles, training and development initiatives to equip staff with the necessary skills for the transition, and strategies to manage potential staff turnover. It provides a roadmap for human resources management, helping to ensure continuity of operations, minimize disruption, and position the organization for a successful transition to the new hourly rate model. A workforce plan typically includes:

- **Current Workforce Analysis:** A detailed analysis of the current workforce, including the number of employees, their skills, roles, and demographic information.
- **Future Workforce Forecast:** A projection of future staffing needs based on LOPD's strategic objectives, industry trends, and other relevant factors.
- **Gap Analysis:** An assessment of the gaps between the current workforce and future needs. This should identify any skills shortages, surpluses, or mismatches that need to be addressed.
- **Recruitment Strategy:** A plan for attracting and hiring new employees to fill identified gaps. This could include strategies for advertising vacancies, screening and selecting candidates, and onboarding new hires (including contract attorneys).
- **Retention Strategy:** A plan for retaining current employees, particularly those with critical skills. This could include strategies for employee engagement, career development, and succession planning.
- **Training and Development Plan:** A plan for developing the skills and competencies of the workforce. This could include on-the-job training, mentoring programs, professional development opportunities, and leadership development programs.
- **Succession Plan:** A plan to address upcoming retirements and identify and develop employees who can fill key roles in the future.
- **Implementation Plan:** A detailed plan for implementing the staffing plan, including timelines, responsibilities, and resources required.



- **Monitoring and Evaluation Plan:** A plan for tracking the progress of the staffing plan and evaluating its effectiveness. This should include key workload indicators and regular review periods.
- **Budget:** An outline of the financial resources required to implement the staffing plan, including costs for recruitment, training, and retention strategies.

Operating staffing ratios and workload indicators can be used to help LOPD proactively manage operational staffing needs as staffing numbers grow. [Appendix D](#) includes a full list of workload indicators for consideration as LOPD develops a five-year staffing plan.

It's important to note that operating staff ratios are highly dependent on the sophistication of LOPD's operating environment. The number of manual and paper-based versus automated processes, the tenure and competencies of staff, and the number of systems, hardware, and equipment under management can significantly influence the actual number of staff needed.

B. SYSTEMS AND SOFTWARE

Assess Current Systems

Public defense systems involve a complex interplay of various systems ranging from court systems to payment processing. Court systems are the foundational platform for filing, scheduling, and adjudicating cases. In New Mexico, this system is Odyssey Courts by Tyler Technology, where records of all proceedings and outcomes are maintained. Case management systems are used by public defense agencies to organize and manage their caseloads, track important deadlines, and store case-related information. In New Mexico, this system is defenderData by Justice Works. This system also allows public defenders, including contract attorneys, to track their time on each case. The defenderData system is used by contract attorneys to generate invoices (called vouchers) to submit for payment. These invoices are then processed and sent to the New Mexico Department of Finance and Administration's SHARE system for payment processing.

The following table outlines the systems currently in place to support core functions, any expected required changes for the transition to hourly rates, and key considerations that include notes on processes that are manual or paper-based and/or external to current systems.



FUNCTION	CURRENT SYSTEMS	REQUIRED FOR TRANSITION	KEY CONSIDERATIONS
Contract Documents	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Verify if the system needs to be updated to track remaining contract balances based on time rather than a base rate. 	<ul style="list-style-type: none"> • Contract attorneys submit RFP responses via email. • Contract documents are prepared manually outside of any system. • Contract details are entered manually into defenderData. • No reporting is directly available out of defenderData to track contract balances. CCLS tracks contract balances manually outside of the system. LOPD will evaluate all available systems for contract balance tracking functionality. • Contract status information doesn't appear to be updated regularly (open contracts from prior fiscal years).
Case Assignment	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None required. • Opportunities for operational efficiencies exist. 	<ul style="list-style-type: none"> • CCLS emails court and LOPD offices spreadsheets with the rotation of contract attorneys. • LOPD offices assign cases based on the rotation. In district without an LOPD office, the Court assigns the cases based on the rotation. • CCLS assigns all homicide cases. • CCLS manually assigns conflicted cases via email and phone calls.
Court Documents	<ul style="list-style-type: none"> • Odyssey (Tyler Technologies) 	<ul style="list-style-type: none"> • None required. • Opportunities for operational efficiencies exist. 	<ul style="list-style-type: none"> • No system integration with defenderData.
Case Management	<ul style="list-style-type: none"> • defenderData (Justice Works) 	<ul style="list-style-type: none"> • None required. • Opportunities for operational efficiencies exist. 	<ul style="list-style-type: none"> • If the district has an LOPD office, LOPD staff manually re-enter case information from Odyssey into defenderData once it is assigned to the contract attorney. • If a district has no LOPD office, contract attorneys manually enter case information into defenderData. • Contract attorneys are responsible for closing cases.



FUNCTION	CURRENT SYSTEMS	REQUIRED FOR TRANSITION	KEY CONSIDERATIONS
Time Entry	<ul style="list-style-type: none"> defenderData (Justice Works) 	<ul style="list-style-type: none"> Explore functionality to allow contractor attorneys to upload data and/or integrate with most common time-tracking tools or systems. Determine the extent to which time entry can be standardized, such as for case tasks. 	<ul style="list-style-type: none"> Contract attorneys enter time into defenderData. There is currently no way to upload or integrate with other time-tracking tools or systems. CCLS must review and approve each line of time entry data entered by contract attorneys. CCLS tracks approval for complex litigation billing via email exchange.
Expense Entry	<ul style="list-style-type: none"> defenderData (Justice Works) 	<ul style="list-style-type: none"> None required. 	<ul style="list-style-type: none"> Contract attorneys submit Litigation Service Requests (LSRs). An LSR is submitted when a contract attorney needs an expert witness for trial. These witnesses are not paid through a contract attorney's fees. Rather, invoices are submitted by the witness, signed off on by the attorney (both contract and in-house), then sent to the Fiscal Unit for auditing. CCLS tracks approval for LSRs via email exchange. LOPD's Fiscal Unit's Salesforce implementation project presents an opportunity to manage auditing requirements, tracking, reporting, and SHARE entry for LSRs.
Invoicing	<ul style="list-style-type: none"> defenderData (Justice Works) 	<ul style="list-style-type: none"> Confirm that the system allows contractor attorneys to generate invoices based on entered time. 	<ul style="list-style-type: none"> Contract attorneys must manually create invoices each month using a PDF/Word document as a cover letter. This is attached to a voucher record in the system. Contract attorneys must generate an Expense Log Report in defenderData for the invoicing period, export it to Excel, and attach it to the voucher record in the system. CCLS must manually review invoices to determine whether cases were properly invoiced. CCLS must manually track and follow up with contractors who fail to submit invoices on time. LOPD's Fiscal Unit's Salesforce implementation project presents an opportunity to manage auditing requirements, tracking, reporting, and SHARE entry for LSRs.



FUNCTION	CURRENT SYSTEMS	REQUIRED FOR TRANSITION	KEY CONSIDERATIONS
Payment Processing	<ul style="list-style-type: none"> New Mexico’s financial system SHARE⁵ 	<ul style="list-style-type: none"> None required. Opportunities for operational efficiencies exist. 	<ul style="list-style-type: none"> CCLS staff are responsible for manually updating payment status information.
Client Complaints	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None required. Opportunities for operational efficiencies exist. 	<ul style="list-style-type: none"> CCLS receives and responds to client complaints manually. No system is used.
Oversight and Performance Management	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None required. Opportunities for operational efficiencies exist. 	<ul style="list-style-type: none"> CCLS does not use a performance management system.

Assess Data Quality and Cleanup

Good data quality and management will also be an important part of a smooth transition, increasing the likelihood of adoption for both LOPD staff and contract attorneys.

LOPD staff and contract attorneys manually enter data and change status information related to cases, invoices, and payments in the defenderData case management system. As commonly seen in systems with significant manual and duplicative data entry procedures, reporting can be compromised, as manual data entry is prone to human error. Mistyping, transposing numbers, or entering data into the wrong fields can lead to inaccuracies that can skew reports. Individuals may have different ways of entering the same data type, leading to inconsistencies that can make it difficult to aggregate and analyze data accurately.

It is recommended that LOPD assess the data managed within defenderData as well as the information that is managed through spreadsheets or other software. This includes contract attorney information, case information, and rate information among others. The current data in defenderData will need to be thoroughly cleaned up to support the transition. This will likely involve removing outdated or irrelevant data, correcting errors, and standardizing data formats.

As the transition progresses, the data in the systems will need to be regularly updated, validated, and cleaned to ensure it remains accurate and relevant. Regular data audits and quality checks should be conducted to identify and address any data quality issues promptly. By ensuring the integrity of the data in defenderData, LOPD can enable accurate billing and reporting, and support effective management of the new hourly rate model.

Update Systems or Software

Once software and systems have been assessed for their ability to support the new hourly rate model, the following key steps are recommended to make the necessary updates:

⁵ <https://www.nmdfa.state.nm.us/financial-control/share/>



- **Develop a System Update or Replacement Plan:** Depending on the assessment results, develop a plan for updating the existing systems or replacing them with new ones. This should include timelines, responsibilities, and resources required.
- **Engage Vendors or IT Specialists:** If new systems are required or if significant updates are needed, engage with software vendors or IT specialists. They can provide expert advice, assist with system selection or design, and help with the implementation.
- **Update or Implement Systems:** Carry out the necessary updates to the existing systems or implement the new systems as per the plan. This could involve installing new software, configuring settings, integrating with other systems, and migrating data.
- **Test the Systems:** Conduct thorough testing of the updated or new systems to ensure they function as expected. This should include testing all key features, checking data accuracy, and testing integration with other systems.
- **Train Users:** Provide training to all users on how to use the updated or new systems. This should include both technical training on how to use the system features and process training on how to perform their tasks using the system.
- **Monitor and Troubleshoot:** After the systems are live, monitor their performance closely to identify any issues. Provide ongoing support to users and troubleshoot any problems that arise.
- **Gather Feedback and Make Improvements:** Gather feedback from users on the usability and effectiveness of the systems. Based on this feedback, make ongoing improvements to the systems.

C. DETERMINE CONTRACTOR HOURLY RATES

Proper compensation plays a pivotal role in the recruitment and retention of contract public defense lawyers, directly impacting the quality and stability of legal representation available to indigent defendants. Competitive hourly rates attract a broader pool of qualified candidates, including those who might otherwise opt for private practice, federal practice, or other legal sectors offering higher remuneration. Furthermore, fair and adequate compensation helps in retaining experienced contractors who are crucial for mentoring newer lawyers and enhancing the overall effectiveness of the public defense system. When contract attorneys are compensated comparably to their peers in other legal fields, it not only validates their essential role within the justice system but also reduces turnover rates, thereby avoiding the costs and disruptions associated with frequent hiring and training of new staff.

LOPD currently uses an hourly rate of \$85 as a framework when paying attorneys under complex litigation compensation. Complex litigation compensation allows attorneys to request additional compensation on cases by tracking their time in defenderData. This captures the additional time beyond what would be considered included in the base rate due to case complexities.

To contribute to the success of the hourly rate model, LOPD should align its hourly rate with the labor market and regional hourly rates, such as those established by peer agencies such as the District Attorney's office. The industry standard is to adopt a transparent formula that discloses how the rate is determined. Factors commonly included in contractor hourly rates include the following:

- **Overhead Costs:** The formula should account for an attorney's overhead costs, including office space, utilities, legal research tools, and professional insurance.



- **A Profit Margin:** A contract attorney needs to make a profit as a business; therefore, the formula should include a reasonable profit margin.
- **Work Complexity:** More complex work typically commands a higher rate. The formula should consider the complexity and scope of the work required.

Compensation benchmarking was conducted during development of this plan including a review of regional agencies. Based on benchmarking findings, LOPD has determined that a \$150 hourly rate for the transition will be consistent with other regional agencies, contribute to the success of the transition, and aid in efforts to recruit and retain contract defense attorneys.

Review and Update

There are multiple data sources to calculate a starting hourly rate for contractors. This report provides two options: 1) Compensation benchmarking data for litigation attorneys from compensation databases, and 2) collected data from similar agencies. See [Appendix G](#) for a detailed breakdown of all the data and calculations.

One way to set the hourly rates is by using market salary pay data to calculate a contractor's pay rate. The table below shows the calculations that use the percentiles of market pay for litigation attorneys. Another approach is to use data from similar agencies and/or salary data from other agencies to calculate a rate. The other attorney salary data comes from wage scales published by the New Mexico Judicial Branch, the New Mexico District Attorney, and the New Mexico State Personnel Office.

OTHER AGENCY ATTORNEYS	TYPE	LOW	MIDPOINT	HIGH
Litigation Attorneys – Market Compensation Data ⁶	Calculated with Wage Data	\$112 (25th)	\$128 (50th)	\$146 (75th)
New Mexico State Attorneys ⁷	Calculated with Wage Data	\$81	\$101	\$150
Other Agency Contractor Rates ⁸	Published Contractor Pay Rates	\$90	\$144	\$165
New Mexico Risk Management Department	Published Contractor Pay Rates	\$125	\$163	\$200
Federal (U.S. Criminal Justice Act) ⁹	Published Contractor Pay Rates	\$172	\$196	\$220

Contract attorneys are often paid more for certain types of cases, particularly because of the skill and experience required to provide adequate legal representation on complex litigation (such as capital cases). The distinction between capital and non-capital cases is the only one made in the Criminal

⁶ Includes all attorney types captured in market salary pay data nationwide.

⁷ Includes the New Mexico Judicial Branch, New Mexico District Attorney, and New Mexico State Personnel Office.

⁸ Includes the federal public defense system, other New Mexico contract attorney rates (civil), and public defense systems in other states.

⁹ The CJA rate typically increases each year.



Justice Act (CJA) guidelines regarding the hourly rate for compensating attorneys in federal criminal proceedings.

Implementation

Once, the new hourly rates are finalized, they can be communicated to all relevant stakeholders, including employees and contract attorneys, and officially adopted. It's important to provide clear and comprehensive information about the new rates and how they were determined to ensure understanding and acceptance.

It will be essential for LOPD to conduct regular and periodic benchmarking of its hourly rate. Industry trends recommend performing updated benchmarking every three to five years. Benchmarking can be done more frequently based on significant economic events. Regular reviews and updates will ensure that hourly rates remain consistent with the labor market, directly impacting LOPD's ability to maintain its contractor pipeline. This will significantly contribute to existing efforts to reduce the public defense attorney shortage.

D. PROCESS MAPPING AND UPDATES

Analyze Current Processes

The transition from a base rate/complex litigation compensation to an hourly rate model will necessitate significant updates to several processes within LOPD. Assessing processes ahead of a transition is a critical step to ensure the successful implementation of new procedures. The first step is to identify the processes that will be affected by the transition and map out the current state in detail to understand how tasks are currently performed. This should include all steps, roles involved, and resources used. Next, each process should be analyzed based on how it will need to change. This could involve introducing new steps, eliminating unnecessary ones, or changing the sequence of tasks. Then, design the new processes, ensuring they align with the objectives of the transition. An overview of the processes that are likely to be impacted by the transition is described further in [Appendix B](#).

Design Updated Processes

Once processes have been analyzed, LOPD or other contracted professionals will need to design updated processes. Key steps include the following:

- **Engage Key Personnel:** The first step is to identify and engage key personnel who will be affected by the new processes or who have expertise in the area. This could include employees, managers, and even clients. Their input is valuable in understanding the current processes, identifying potential issues, and suggesting improvements.
- **Identify Process Requirements:** Based on the objectives of the transition and input, identify the requirements for the new processes. This could include the tasks to be performed, the sequence of operations, the roles involved, and the resources needed.
- **Develop Draft Processes:** Using the identified requirements, develop draft processes. This could involve creating process maps or flowcharts that visually represent the steps in the process, the decision points, and the roles involved.



- **Review and Refine Drafts:** Share the draft processes with stakeholders for review. Gather their feedback and make refinements as necessary. This step may be repeated several times until all stakeholders agree on the proposed processes.
- **Finalize Processes:** Once all feedback has been incorporated and the processes have been refined, finalize the process designs. This could involve creating detailed process documentation that outlines the steps, roles, and resources in each process.

Train Employees on Updated Processes

Depending on the level of change to each process, some training may be more straightforward than others. LOPD may be able to support training on new processes internally, but for major technology updates, LOPD should engage the technology vendor to support employee training. To train staff on updated processes, LOPD or contracted professionals should:

- **Develop Training Materials:** Create clear, comprehensive training materials that outline the new processes, the roles involved, and the tasks to be performed. These materials could include manuals, slide presentations, videos, or online modules.
- **Schedule Training Sessions:** Plan and schedule training sessions that are convenient for employees. Depending on the complexity of the new processes, LOPD may need multiple sessions or follow-up sessions for reinforcement.
- **Conduct Training:** Deliver the training in an engaging and interactive manner to facilitate learning.
- **Provide Support:** After the training, provide ongoing support to help employees apply what they've learned. This could involve providing resources for reference, setting up a help desk, or assigning mentors or coaches.
- **Monitor Performance:** Track key performance metrics and observe employees performing their tasks to assess the effectiveness of the training and identify any issues that need to be addressed.
- **Conduct Refresher Training:** Depending on the complexity of the new processes and the feedback received, consider conducting refresher training sessions to reinforce the learning.

E. POLICIES, PROCEDURES, AND CONTRACTS

Assess Operating Policies and Procedures

LOPD will need to review its policies and procedures to reflect the new operating environment. LOPD may choose to recruit an outside resource to help with this effort but should plan to dedicate four to six months to the development of updated policies and procedures. LOPD's updated policies should address the following topics:

- Professional standards compliance and counsel performance
- Compensation rate by case type
- Annual caps on billable hours
- Anticipated minimum and maximum hours by case type and review procedures for cases outside those thresholds
- Billing procedures and fair compensation requirement



- Contract procedures and timelines, including when new contracts will be issued based on the transition phase

When updating policies and procedures, LOPD should work closely with the New Mexico State Bar. The Bar should be an important strategic partner for this transition. In other states, the Bar has played an important role as a regulatory body setting standards for professional conduct and providing resources for continuing legal education to ensure the highest quality of legal services. This makes the organization central to revision and updates so that standards and accountability practices across the state are consistent.

LOPD also has access to several reference resources, such as the Washington State Bar Association's (WSBA) [Standards for Indigent Defense Services](#), among others. Helpful WSBA's standards pertaining to hourly case compensation could include:

- **Standard 1: Compensation.** Includes per-case compensation agreements and states that attorneys shall not engage in flat fee or per-case compensation contracts or agreements, as these compensation structures create an actual conflict for the public defense attorney.
- **Standard 2: Duties and Responsibilities of Counsel.** Requires representation to be delivered with minimum standards set forth by governing bodies.
- **Standard 3: Caseload Limits and Types of Cases.** Sets maximum case credit limits by case type.
- **Standard 11: Monitoring and Evaluation of Attorneys.** Requires all jurisdictions to provide a mechanism for systematic monitoring of public defense attorneys and ensure timely review and evaluation of public defense services.
- **Standard 13: Limitations on Private Practice.** Requires private attorneys to set a limit on the amount of privately retained work that can be accepted.

Review Procedures for Contract Attorney

LOPD will need to update its procedures for assigned counsel. Key procedures in the assigned counsel manual that should reflect the new operating environment include:

- Policies and procedures governing contract counsel billing and payments
- Audit and oversight procedures
- Assigned counsel forms
- Associated resources

For example, LOPD can refer to [King County's Assigned Counsel Policy](#), which sets out the criteria for assigned counsel and relevant billing procedures. Related procedures include:

- **VII Assigned Counsel Panel Requirements. C Office Access, Resources, and Contact Requirements. 6:** Requires assigned counsel to utilize and maintain commonly used software and programs in order to effectively submit billings, expert services requests, or other exchanges of data.
- **XII Billing Process and Procedures:** Details the general payment process, billing requirements and standards, how to proceed in cases that have exceeded the billable hour limit, and rules for final billings and reimbursable costs.



LOPD can also refer to Massachusetts' [CPCS Assigned Counsel Manual](#), particularly Chapter 5, Policies and Procedures Governing Billing and Compensation, and Chapter 7, Audit and Oversight Procedures.

Update Policies and Procedures

To update policies and procedures, LOPD should take the following steps:

- Develop a list of policies and procedures, and indicate which policies need to be created as they are not present, and which already exist but need to be updated. [Appendix E](#) provides a list of policies and procedures that LOPD could consider.
- Prioritize the list to focus efforts where they will have the greatest impact, while also managing risks and aligning with strategic objectives.
- Engage the appropriate resources to support the update or development of policies and procedures. This could be a temporary or outsourced hire or contracted professionals. Determine who will review the documents.
- Determine the file naming convention and identify a centralized file space where documents will be stored and accessible to staff. Document storage should be as straightforward as possible to avoid issues with version control.
- Develop the policies and procedures following best practices, including the following:
 - Include a clear and concise table of contents with hyperlinks.
 - Use simple and accessible language.
 - Include only the necessary details.
 - Provide references to examples, guides, and templates where relevant. Consider storing the referenced materials outside of the document to promote easy navigation and updates.
- Post policies and procedures online and communicate the updates to contract attorneys. A proposed communication schedule is shared in [Appendix E](#).

Review and Update Contracts

The new contracts must clearly define the hourly rate, the billing procedures, and the payment terms. Contracts should address important aspects of updated professional standards, caseload and workload standards, and compliance monitoring activities. The contract should also specify the expectations for performance and quality of service. The contract should also include provisions for dispute resolution, termination, and renewal of the contract. Other areas that will like require updates include:

- Scope of work
- Monitoring and quality control
- Contract and caseload size
- Credit for cases
- Compensation (including not only the hourly rate but also any other compensation type that is established such as for expenses, data collection, travel, etc.)
 - Expert witnesses, investigators, social workers, and alternative sentencing advocates



- Process to obtain a compensation waiver for cases outside of the established minimum and maximum billable hours by case type
- Billing procedures
 - Rate schedule
 - Payment terms
- Performance and quality of service
- Required records and financial audit

F. CONTRACT ATTORNEY TRAINING

Develop a Change Management Strategy

The transition to hourly rates will require a coordinated change management effort. Some contractors are already using time-tracking software that will enable them to easily bill their time hourly, but many contractors are not. This means that the transition to hourly billing presents a significant daily behavioral change that will impact their productivity in the short term, and they are likely to feel resistant to the transition. The success of the change will depend on LOPD working to address the resistance among contractors who are not yet equipped to undertake hourly billing.

LOPD can mitigate some of this pushback with strategic communications aimed at building awareness and desire for change among contractors. Effective change management answers the following questions:

- Why is the change happening?
- What are the organizational benefits?
- What is the risk of not changing?
- What's in it for me?
- How will I specifically be impacted?

All change-related communications should be delivered by two main roles:

1. **Senior Leader:** A senior leader within LOPD should send all change-related messages explaining why the change is happening and the impacts of the change on the organization.
2. **Direct Supervisor:** The attorney directly in charge of contracted attorneys should send all messages related to the personal impacts of the change.

LOPD should work to support contractors in adopting the necessary timekeeping tools prior to the transition beginning. Strategies to do this could include recommending timekeeping platforms in early communications, providing training on the new timekeeping and invoicing process, and allowing contractors with concerns to attend Q&A sessions with relevant LOPD personnel. The Q&A sessions could also be attended by contractors who already utilize hourly billing to serve as a resource for contractors making the transition.



Develop Contract Attorney Training

The shift from base rate billing to hourly billing will require a comprehensive training plan designed to provide contract attorneys and internal employees with a clear understanding of the new billing rate structure, updated policies and procedures, tools, and systems that will be used to manage the billing, professional standards and expectations, and compliance processes. Training for contract attorneys should include guidance on all related procedures, including how they should track their time, work code definitions, the frequency of time entry requirements, and when and how they should invoice. Internal staff training should include guidance on reviewing invoices, escalating issues, and auditing case budgets.

Additionally, substantive training in practice standards and expectations is also advisable. Substantive training should be developed in consultation with contract attorneys and other public defense experts and could include critical areas of practice such as legal research, investigation, motions practice, use of investigators and experts, and trial skills.

Comprehensive training programs typically include sections that address:

- **Contract attorney Needs:** In each phase of the transition, there will be a high degree of variability in the needs, skills, knowledge, and technology levels of contract attorneys. Some will have experience with timekeeping systems, some may already have their own systems, some may have administrative support, and some may have none of these. LOPD should anticipate and tailor training content and delivery methods to meet contract attorney needs.
- **Clear Objectives:** LOPD should define what it wants contract attorneys to learn or achieve by the end of the training. These objectives should be specific, measurable, achievable, relevant, and time-bound (SMART).
- **A Variety of Training Methods:** Different people learn in different ways, so use a mix of training methods such as tutorials, discussions, hands-on exercises, and e-learning modules. Encourage contract attorneys to actively participate in the learning process. This could involve a test environment where contract attorneys have opportunities to practice new skills. LOPD will need to determine if it will host training in-person or virtually if the training will be recorded, and if so, where training will be posted for reference.
- **Real-World Examples:** Use case studies, scenarios, or examples that are relevant to contract attorneys. This can help them understand how the training applies to expectations from the transition.
- **Support Materials:** Give contract attorneys materials such as manuals, guides, or online resources that they can refer to after the training. Visual aids such as slides, diagrams, or videos can help trainees understand and remember the training content.
- **Feedback:** Provide opportunities for trainees to ask questions, discuss their thoughts, and give feedback on the training. This can help you improve future training.

LOPD should plan to review and update its contract attorney training program based on feedback from the pilot program in Phase II, and subsequent training sessions across each phase of the transition. Ongoing improvement will help LOPD continue to refine its materials. This will help contract attorneys in future phases with the transition and adoption of the hourly rate model.



G. PHASE I COST CONSIDERATIONS

Multiple costs may become applicable during the planning phase. Specific decisions by LOPD will drive the costs of the chosen direct (e.g., consulting fees and technology licenses) and indirect (e.g., staff time and investments).

ACTIVITY TYPE	CONSIDERATIONS	ASSUMPTIONS
Employee or Outsourced Time	<ul style="list-style-type: none"> Participating in data clean-up activities. Conducting process documentation and mapping. Reviewing and updating policies and procedures. Developing and documenting training materials. 	<ul style="list-style-type: none"> This work could be performed internally by LOPD staff. Alternatively, LOPD could retain temporary outsourced providers to support this work.
System Updates	<ul style="list-style-type: none"> Explore costs of reviewing and planning necessary system updates with key technology vendors. 	<ul style="list-style-type: none"> System updates may not be required but should be evaluated.

Estimated Costs

The table below summarizes the potential total costs based on the 2023 calendar-year case assignment data pulled from defenderData, with the New Mexico Delphi hours by case type applied to calculate the potential total cost per case type when converted to an hourly model. See [Appendix H](#) for a more detailed breakdown of the calculations.

These hours represent the amount of time an attorney should spend on specific case types; however, it is understood that this does not reflect the actual number of hours an attorney spends per case type. Applying the Delphi results to historical caseloads, we can calculate a proxy number of the number of hours that should be needed by contracted attorneys. It should be noted that complex litigation and other cases requiring more hours spent can often be an ongoing effort over multiple years (both calendar and fiscal). The actual hours per case will always depend on the case's specifics, the availability of support personnel, the experience of the attorney, and the overall case complexity.

BASE RATE TYPE DELPHI CATEGORY	CASES	CURRENT ESTIMATED COST ¹⁰	DELPHI HOURS	COST OF DELPHI HOURS
High-Level Felony*	164	\$1,066,000	58,628	\$8,794,196
1st Degree Felony	198	\$188,100	14,204	\$2,130,551
2nd Degree Felony	1,017	\$945,810	52,955	\$7,943,276

¹⁰ The "Current Cost" = base rate fee amount x the number of cases assigned in that type. Because of data reporting limitations out of defenderData, the "Current Cost" value does NOT include the nuanced calculations of all the potential variances that would be in true costs – no distinction is made between districts (the highest rate was selected); probation violations were excluded (as only one fee per probation violation is paid regardless of case numbers or number of violations charged); and no distinction is made between first and second chair rates (for high-degree felonies).



BASE RATE TYPE DELPHI CATEGORY	CASES	CURRENT ESTIMATED COST¹⁰	DELPHI HOURS	COST OF DELPHI HOURS
3rd Degree Felony	2,513	\$2,261,700	139,367	\$20,905,016
4th Degree Felony	7,319	\$5,708,820	275,229	\$41,284,406
Juvenile	556	\$233,520	22,738	\$3,410,708
Misdemeanor DWI/DV	3,838	\$1,381,680	141,978	\$21,296,657
Misdemeanors	5,686	\$1,250,920	119,164	\$17,874,674
Total:		\$13,036,550		\$123,639,480

** Does not include time/cost associated with complex litigation billing (billing for time exceeding the base rate).*



The following table summarizes the calculations in the table above to represent the estimated total cost per phase as case groupings transition from a base rate model to an hourly rate model.

PHASED CASES	PHASE III	PHASE IV	PHASE V
Number of Cases	200	12,000	21,000
Total Delphi Hours	59,000	563,000	824,000
Cost of Base Rates	\$12,000,000	\$2,600,000	-
Cost of Hourly	\$8,800,000	\$84,500,000	\$123,600,000
Total Estimated Cost	\$20,800,000	\$87,100,000	\$123,600,000



V. PHASE II: PILOT PROGRAM

PHASE II: PILOT PROGRAM	
Purpose	Conduct an hourly rate pilot with participants from the 5 th Judicial District
Timeline	18 months
Estimated Number of Contract Attorneys Impacted	To be determined. Not all contract attorneys in the 5 th Judicial District will be required to participate in the study. The goal of the pilot is to engage attorneys who conduct a variety of case types and have a range of administrative and technological support. This will better enable LOPD to gather meaningful data to support the official transition in subsequent phases.
Estimated Number of Cases Converted	The number of cases will be determined by the number of attorneys participating in the pilot program. Currently, the pilot will focus on transitioning cases that are a 3 rd -degree felony or greater.
Estimated Total Cost of Hourly Cases	To be determined once the contract attorneys have been selected, and the number of cases and case types per attorney are known.
Cost of Remaining Base Rate Cases	This will be calculated after the selection of attorneys and the total cases and case types transitioning to the hourly rate are determined.
Milestones	<ul style="list-style-type: none"> ● Set a launch date ● Communicate upcoming transition to relevant contract attorneys ● Host training sessions on new policies and procedures as well as standards and practice expectations ● Update contracts ● Publish written guidance ● Monitor the adoption of the new processes ● Solicit feedback from contract attorneys at the end of the period to identify and resolve issues ● Make needed updates to systems and procedures ● Update documentation ● Communicate updates to employees and contract attorneys

A pilot project is a trial version of the full-scale transition, designed to test feasibility before the full rollout. Pilots typically involve a limited timeframe and a smaller scope, allowing LOPD to analyze and evaluate the potential risks of the transition’s full-scale launch. This can include operational, technical, financial, and relationship considerations. It also allows LOPD to refine the approach, strategies, and processes they plan to use for the full-scale implementation. LOPD has successfully conducted pilot programs in the past and can use this experience to design and launch a pilot program for the hourly wage transition.

The milestones and steps for conducting the pilot are detailed in the following sections.



Plan the Pilot Program

Planning encompasses the necessary steps to ensure that the pilot program, objectives, and resources are in place ahead of the pilot launch and commonly includes the following activities:

- **Define Objectives:** Clearly outline the goals and expected outcomes of the pilot program. Since LOPD has experience conducting pilot programs, it can use past resources to update the goals and objectives for a new pilot.
- **Identify Participants:** Choose a representative group of contract attorneys to participate in the pilot. LOPD has several jurisdictions that could be considered in a pilot. LOPD has identified select jurisdictions that will be realistic options to conduct a pilot. Of these, the 5th Judicial District has been identified; however, this may change as policies, procedures, and systems are assessed and updates are made.
- **Develop a Detailed Plan:** Create a comprehensive plan for the pilot program, including timelines, responsibilities, resources, and key steps.
- **Prepare Resources:** Ensure all necessary resources, such as training materials and updated systems, are ready for the pilot.

Engage Contract Attorneys

Once the program is planned, LOPD will need to engage target contract attorneys for the pilot. Communication should include details on the purpose, duration, resources, and expectations. LOPD should be prepared to address questions or concerns contract attorneys have. This could be through dedicated virtual meeting sessions, or an email address that's set up to track incoming questions. LOPD should be prepared to gather questions from contract attorneys through an FAQ-type format that can be updated regularly and circulated to all contract attorneys in the pilot. This can help make sure that all questions are answered consistently, and that contract attorneys have access to the same information as others.

Engagement should also include contract attorney training to equip participants with the necessary knowledge and skills to test the new model. This will likely include, not only process training, but also additional training on standards and practice expectations. It's important to ensure that all contract attorneys are well-prepared and understand their roles within the new processes.

Launch the Program

The launch of the pilot program involves implementing the new processes that have been designed and tested. Support should be readily available to assist contract attorneys as they navigate the new processes and systems. The launch should be communicated clearly to all stakeholders, and any initial issues should be addressed promptly to ensure a smooth start.

Monitor Implementation of New Processes

The monitoring phase involves closely tracking the implementation of the new processes. Regular observation of operations and tracking of key performance metrics are essential to assess how well the new processes are working. Such metrics will not only include process matters, such as invoices submitted timely, but also substantive practice measures. In addition, feedback should be gathered from the contract attorneys participating in the pilot program. Their experiences and insights are



invaluable for understanding how the new processes are being adopted in practice and identifying any issues or challenges that may arise.

Analyze Data, Assess Effectiveness, and Report on Progress

After the monitoring phase, the data collected should be analyzed to assess the effectiveness of the new processes. This analysis should consider both quantitative data, such as performance metrics, and qualitative data, such as feedback from contract attorneys. The findings should be compiled into a report that outlines the successes and challenges of the pilot program as well as areas for improvement. This report should be shared with key stakeholders, including all contract attorneys and relevant staff, to keep them informed about the progress of the transition.

Make Improvements to the Transition Plan as Needed

Based on the findings from the pilot program, the transition plan should be reviewed and updated as needed. This could involve making changes to the new processes, providing additional training, or adjusting the timeline for the full transition. Any changes should be communicated clearly to all stakeholders to ensure they understand how the updates will affect them. The goal of this phase is to use the insights gained from the pilot program to improve the transition plan, ensuring a smoother and more effective transition when the new hourly rate model is rolled out fully.



VI. PHASES III THROUGH V: CONTRACT ATTORNEY TRANSITION

A. CONTRACT ATTORNEY TRANSITION TIMELINE

PHASE III: HIGH-LEVEL FELONY, HABEAS, AND APPELLATE CASES	
Purpose	Transition contract attorneys who work on high-level felony cases, defined as first-degree felony murder and life imprisonment, habeas, and appellate cases to the hourly wage model.
Timeline	18 months
Estimated Number of Contract Attorneys Impacted	Approximately 40 contract attorneys
Estimated Number of Cases Converted	Approximately 200 cases
Estimated Total Cost of Hourly Cases	Up to \$8,800,000
Cost of Remaining Base Rate Cases	Up to \$12,000,000

PHASE IV: ALL OTHER FELONY AND JUVENILE CASES	
Purpose	Transition contract attorneys who work on 1st degree through 4th-degree felony and juvenile cases to the hourly wage model.
Timeline	18 months
Estimated Number of Contract Attorneys Impacted	Approximately 100 contract attorneys
Estimated Number of Cases Converted	Approximately 12,000 cases
Estimated Total Cost of Hourly Cases	Up to \$84,500,000
Cost of Remaining Base Rate Cases	Up to \$2,600,000



PHASE V: ALL REMAINING CONTRACT ATTORNEYS	
Purpose	Transition contract attorneys who work on all misdemeanor cases to the hourly wage model.
Timeline	18 months
Estimated Number of Contract Attorneys Impacted	All contract attorneys
Estimated Number of Cases Converted	Approximately 10,000 cases
Estimated Total Cost of Hourly Cases	Up to \$123,600,000
Cost of Remaining Base Rate Cases	\$0



B. TRANSITION ROLLOUT

The process for rolling out the transition for contract attorneys for Phases III through V will follow a similar set of activities and timelines. The following is a framework to capture overarching initiatives and activities that should be included during each transition phase. A sample communication plan is provided in [Appendix F](#), with more detailed guidance on the timing and type of communication to support each step of the transition.

	MONTHS 1–4			MONTHS 5–8			MONTHS 9–14			MONTH 15	MONTHS 16–18	
1. Set Launch Date, Distribute Communications, and Update Contracts												
Distribute communication materials about the upcoming transition to all relevant contract attorneys.												
Work with contract attorneys to renew contracts with updated terms.												
2. Host Training Sessions on New Processes and Expectations and Distribute Written Guidance												
Work with contract attorneys to schedule training sessions. Conduct training (diamond notations), and distribute written guidance for reference.												
3. Launch and Initiate Monitoring for Adoption of New Processes												
Officially start the hourly rate requirement for high-level felony cases. Activate new systems and processes and provide support as needed.												
Regularly review process metrics, observe operations, and respond to questions and issues. Track implementation of the new processes to assess how well they are working and identify any initial issues.												



	MONTHS 1-4				MONTHS 5-8				MONTHS 9-14				MONTH 15	MONTHS 16-18	
4. Solicit Feedback from Contract Attorneys to Identify and Resolve Issues															
Conduct surveys or feedback sessions, analyze feedback, and develop action plans to resolve identified issues. contract attorney experiences should be solicited and problems or concerns addressed promptly.															
5. Make Needed Updates to Systems and Procedures and Update Documentation															
Review and update systems and procedures based on feedback and monitoring. Update documentation to reflect these changes. Technology, procedures, and documentation should remain accurate and effective.															
Develop and distribute communication materials about any updates. Keep all stakeholders informed about changes and updates during the transition, and ensure they understand any changes and feel supported throughout the transition															



VII. PHASE VI: ONGOING PROGRAM MANAGEMENT

After all involved contract attorneys and internal staff are onboarded to the change and fully functional, Phase VI is the continued maintenance and administration of the hourly rate model, with a focus on continually improving, and executing the workforce plan developed during [Phase I: Preparation](#), regularly reviewing hourly rates, and recruiting attorneys, case support personnel, and admin to continue efforts at reducing the public defense attorney deficiency.

CADENCE	ACTIVITY
Monthly	<ul style="list-style-type: none">Contracting new attorneysDeveloping and maintaining contractsAssigning cases (including conflict of interest cases)Managing data in defenderDataMaintaining the roster of contract attorneysReceiving and reviewing submitted time and invoicesVerifying approved ratesForwarding invoices to FinanceEscalating for additional reviewResolving errors in invoicesTracking monthly billing and budgets
Semi-Annually	<ul style="list-style-type: none">Budget reports (standard financial reporting)Training refreshers for staff and contract attorneysAuditing service requests and invoicesEnsuring compliance with contract terms
Annually	<ul style="list-style-type: none">Contract renewalAnnual feedback session or survey to contract attorneys and staffStaff workload evaluations to identify additional recruitment needed to support the programReviewing policies, procedures, and compliance monitoring activities; identifying areas for improvement; implementing updates; and communicating changes to impacted persons
Periodically	<ul style="list-style-type: none">Hourly rate evaluation, which may occur less frequently but should not be less than every four yearsAssessment of the attorney deficiencyEvaluate expected hours by case type every 10 years as technology advances, caselaw evolves, and professional standards change



APPENDIX A: LOPD DIVISION OVERVIEW

A. CONTRACT COUNSEL LEGAL SERVICES

CCLS organizes and oversees contracted defenders. Currently staffed with 10 FTEs. The table below shows the roles within CCLS and the expected impact of the transition on the division's workload.

FUNCTION	FUNCTION DETAILS	ROLES CONTRIBUTING	WORKLOAD IMPACT EXPECTATION
Contract Attorney Onboarding	<ul style="list-style-type: none"> Contracting new attorneys Developing and maintaining contracts 	<ul style="list-style-type: none"> Legal Contracts Auditor (Fiscal Unit) Managing Attorney 	<ul style="list-style-type: none"> Some increase to include training on expanded processes. Some increase based on ongoing recruitment of attorneys to reduce the deficiency.
Case Assignment	<ul style="list-style-type: none"> Assigning cases (including conflict of interest cases) Entering data into defenderData Maintaining a spreadsheet of contract attorneys 	<ul style="list-style-type: none"> Paralegal II Office Manager Business Operations Manager 	<ul style="list-style-type: none"> Some increase if the number of attorneys under contract increases. Potentially some decrease with a potential system upgrade, see Systems and Software.
Reviewing Invoices	<ul style="list-style-type: none"> Receiving and reviewing submitted time and invoices Verifying approved rates Tracking monthly billing and budgets Forwarding invoices to Fiscal Unit Escalating for additional review 	<ul style="list-style-type: none"> Office Manager Financial Specialist II Business Operations Manager Financial Specialist (Fiscal Unit) 	<ul style="list-style-type: none"> Increase – level depends on the level at which LOPD reviews all invoices or a sample of invoices.
Monitoring Compliance	<ul style="list-style-type: none"> Auditing service requests and invoices Ensuring compliance with contract terms Resolving errors in invoices 	<ul style="list-style-type: none"> Managing Attorney Deputy Chief of Contract Counsel Legal Contracts Auditor (Fiscal Unit) 	<ul style="list-style-type: none"> Increase – LOPD may also choose to set up an independent auditing and compliance team outside of CCLS.



B. INTERNAL SERVICES (FINANCE, HR, AND IT)

Any changes in roles, responsibilities, staffing, or contract attorneys will have an impact on LOPD's internal services, also known as operating staff. These teams include:

- **Human Resources (HR):** HR is responsible for managing all aspects related to employees, including recruitment, training, performance management, and employee relations. With the transition, HR may need to revise job descriptions and manage any changes in employee roles or responsibilities. They may also need to handle increased recruitment and retention efforts if the transition requires additional staffing.
- **Finance:** The finance department manages LOPD's financial resources, including budgeting, accounting, and financial reporting. With the transition, the finance department may need to revise budget forecasts and financial plans to accommodate the new payment model.
- **Information Technology (IT):** IT is responsible for managing LOPD's technology infrastructure, including hardware, software, networks, and data systems. With the transition, IT will likely need to update or implement new systems for time-tracking and invoice processing. They may also need to provide additional support and training for employees and potentially contract attorneys as they adjust to using these new systems. They may also be involved in supporting data cleanup within defenderData or other areas of LOPD.
- **Facilities Management:** This department oversees the physical workspace and may need to accommodate changes such as additional staff or reconfigured workspaces to support new processes or workflows.
- **Legal:** The legal department ensures LOPD's compliance with laws and regulations. They may need to review and update contracts with contract attorneys to reflect the new hourly rate model.



APPENDIX B: PROCESS OVERVIEW

The following are key processes likely to be impacted by the transition to an hourly rate model. The table includes an overview of the current state and key considerations that should inform potential process updates.

PROCESS AREA	CURRENT STATE	KEY CONSIDERATIONS
Contract Attorney Onboarding	The contract attorney onboarding process is not currently formalized.	<p>LOPD will need to update and/or formalize the contract attorney onboarding process to include an introduction to all major policies and expectations that will be included in the updated general counsel manual. At a minimum, this should include:</p> <ul style="list-style-type: none">● Professional standards● Assigned counsel responsibilities and case management● Billing process and procedures, including reimbursable costs● Case hour limits● Requesting expert services
Case Assignment	<p>Cases are currently assigned by a judge in each jurisdiction, who maintains a set list of available contract attorneys and what case types they work on. When a case is assigned, the contract attorney is responsible for entering the case into defenderData.</p> <p>If there is a conflict of interest for a murder or juvenile case, the Paralegal II in CCLS assigns the case by contacting attorneys on an available list by email. When a contracted attorney accepts the case, a Paralegal II assigns the case in defenderData.</p>	<p>While this process likely does not need to significantly change, LOPD may wish to consider the following updates:</p> <ul style="list-style-type: none">● Integrate an accounting of contract attorneys' current caseload into a list of available attorneys to avoid contacting someone who has already hit their case limit.● Determine whether case assignments can be made according to the qualifications, experience, and proximity of the attorney who will best represent that particular client. For example, King County assigns cases based on the assigned counsel's qualifications and experience, current workloads, and the proximity of their office to where the client is detained and the courthouse where the case is assigned. <p>If LOPD pursues a system upgrade, these aspects may be integrated into the functionality of the new system.</p>



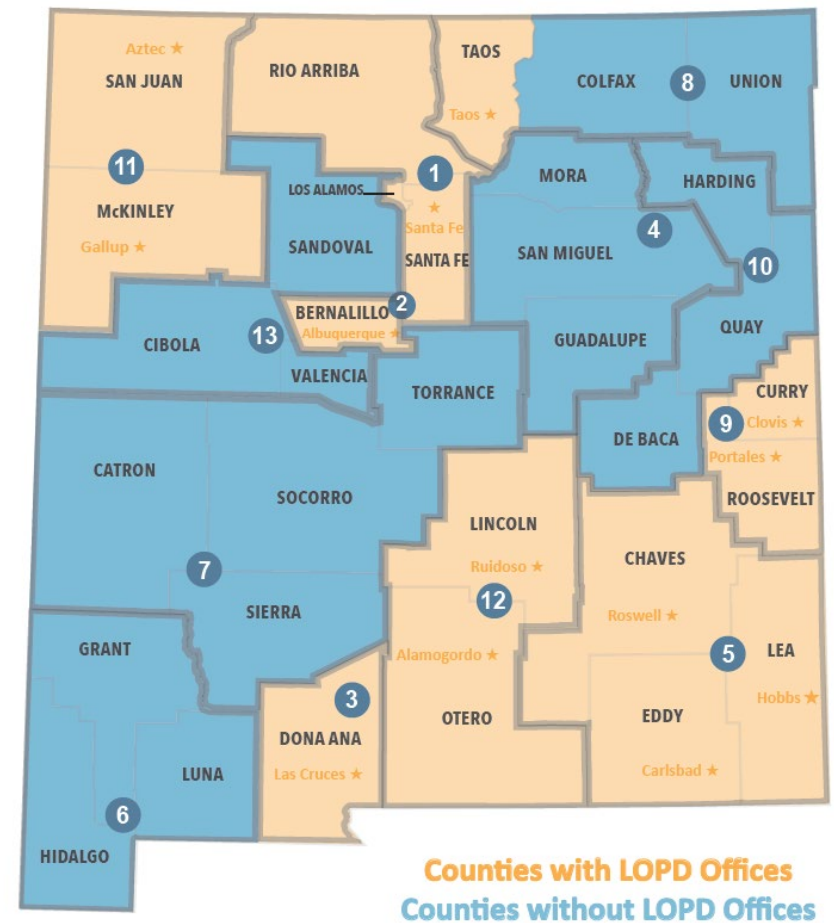
PROCESS AREA	CURRENT STATE	KEY CONSIDERATIONS
Reviewing Invoicing	<p>In 2023, CCLS processed an average of 147 vouchers (invoices) from contract attorneys per month. Over the year, contractors submitted an average of 19 vouchers (invoices).</p> <p>In the current base rate model, invoices are more straightforward, as contract attorneys are paid a set amount per case. With an hourly rate, invoices will become more complex as they will need to accurately reflect the number of hours worked by each contract attorney on each case. This will require more detailed record-keeping and verification to ensure accuracy. Contract attorneys will need to track their time, and LOPD will need to implement more rigorous invoice review and approval processes.</p>	<p>LOPD may need to update or invest in new invoicing software, systems, or staff to handle the increased complexity and volume of data. This change may also impact the speed of payment processing, as more time may be needed to verify and approve each invoice.</p>
Monitoring Compliance	<p>The auditing function at LOPD will need to be expanded to the equivalent of CPCS's Audit and Oversight Unit. The auditing functions that are currently performed by the Financial Specialist IIs in CCLS are functionally a review of incoming invoices, with attention paid to resolving errors or other concerns, and these roles are not required to be filled by legal professionals with trial experience. This is similar to the functions performed within CPCS's Finance Division.</p>	<p>The transition to hourly billing will require increased auditing capacity and processes. The State of Massachusetts' Committee for Public Counsel Services (CPCS) has been paying hourly rates to contracted attorneys since 1983. The enabling statute for CPCS, Chapter 211D, stipulates an audit and oversight requirement. Specifically, Section 12 requires CPCS to establish an audit and oversight department to monitor billing and contract attorney and vendor compensation. Accordingly, CPCS maintains a General Counsel Division with an Audit and Oversight Unit that is separate from Finance, which houses an Accounting Unit and a Private Counsel and Court Cost Payments Unit.</p> <p>The Audit and Oversight Unit at CPCS randomly audits every 650th bill that is submitted in all practice areas. In addition, cases above a certain threshold (125 hours for District Court Cases, for example) are subject to a complex litigation review, where the Audit and Oversight Unit automatically reviews cases over the hourly threshold. The personnel staffing the Audit and Oversight Unit have experience as trial lawyers, which helps them understand case nuance and quickly resolve issues.</p>



APPENDIX C: JUDICIAL DISTRICT AND CONTRACT ATTORNEY OVERVIEW

The following illustrates the counties served across New Mexico by judicial districts. The table presents the number of cases opened in 2023 that were assigned to contract attorneys as a percent of total cases opened (assigned both to in-house public defenders and to contract attorneys).

% OF OPENED CASES ASSIGNED TO CONTRACTORS: JAN. 1—DEC. 31, 2023				
Judicial District	Felony	Juvenile	Misdemeanor	Total
1st Judicial District	26%	22%	31%	28%
2nd Judicial District	19%	33%	6%	13%
3rd Judicial District	23%	22%	11%	16%
4th Judicial District	100%	100%	100%	100%
5th Judicial District	36%	30%	19%	28%
6th Judicial District	100%	100%	100%	100%
7th Judicial District	100%	100%	100%	100%
8th Judicial District	63%	62%	58%	61%
9th Judicial District	39%	49%	20%	31%
10th Judicial District	100%	100%	100%	100%
11th Judicial District	32%	27%	21%	26%
12th Judicial District	21%	41%	13%	18%
13th Judicial District	100%	100%	100%	100%
Statewide Unit	5%	50%	0%	6%
Total Opened	41%	44%	34%	38%





APPENDIX D: WORKLOAD INDICATORS

Workload Indicator Ratios		
Department	Benchmark	Common Ratio
Information Technology	<p>For organizations between 500 and 1,000 employees, the median ratio of IT staff to total employees is 1:25.¹¹</p> <p>IT staffing ratios are typically calculated by comparing the number of front-line IT staff to the overall number of employees they support. For organizations with a complex systems environment, a common ratio is one IT role to 45 FTEs.¹² The actual size of the IT division will depend on the complexity of LOPD's IT infrastructure, range of technology services provided, and level of IT support required.</p>	<p>1:25 (All IT staff)</p> <p>1:45 (Help Desk Staff)</p>
Human Resources	<p>For organizations with up to between 100 and 499 FTEs, the industry-standard staffing ratio is 3.4 HR FTEs per 100 FTEs.¹³ For organizations larger than that, the staffing ratio would be slightly smaller.</p>	<p>3.4:100 (>500 employees)</p>
Finance	<p>Finance and accounting departments are typically structured and sized based on the number of people served (e.g., vendors, employees, and clients), the revenue of the organization, and the variety of finance and accounting tasks or responsibilities. Staffing size can vary depending on the sophistication of the systems environment, staff experience, and areas of oversight within the department.</p> <p>Finance staffing is often associated with either revenue or operating budget alongside employee count.¹⁴</p> <p>In addition, there are productivity metrics that can be used to create internal benchmarks that could be useful when evaluating workloads and staffing requirements. These could include invoices processed per employee per month, time to process month-end close, or total grant funds under management.</p>	<p>\$100M–500M (251–500 employees) = 11.9–14.7 Finance FTEs</p> <p>\$500M–\$1B (501–1,000 employees) = 14.8–19.2 Finance FTEs</p> <p>Variable by Metric</p>

¹¹ "Ratio of IT Staff to Employees," Workforce.com, April 10, 2023, <https://workforce.com/news/ratio-of-it-staff-to-employees>

¹² <https://www.roberthalf.com/blog/management-tips/how-many-help-desk-tier-1-personnel-do-you-need>

¹³ <https://www.aihr.com/blog/hr-to-employee-ratio/#:~:text=Organizations%20with%20fewer%20than%20250,have%20a%20fraction%20of%20this>

¹⁴ "How Big Should Your Finance Team Be as You Grow," GrowCFO, <https://www.growcfo.net/2022/11/16/how-big-should-your-finance-team-be-as-you-grow/>



APPENDIX E: PROCEDURES FOR ASSIGNED COUNSEL BENCHMARKING

The following recommendations are based on policy and procedure manuals for assigned counsel developed by the State of Massachusetts, State of Oregon, State of Washington, King County, and State of Indiana.

PROCEDURE TOPIC	RECOMMENDATION
General Policies Applicable to All Assigned Counsel	<ul style="list-style-type: none">• Assigned counsel requirements• Case and client eligibility• Changes in counsel or client status
Application	<ul style="list-style-type: none">• Application process and ongoing review
Certification and Assignment	<ul style="list-style-type: none">• Case assignment process and responsibilities for all case types
Performance Standards	<ul style="list-style-type: none">• Applicable standards and laws• Conflict of interest• Assigned counsel responsibilities and case management by case type• Support services
Workload Standards	<ul style="list-style-type: none">• Annual caseload limits• Hours thresholds by case type
Billing	<ul style="list-style-type: none">• Time entry• Invoicing• Billing requirements and standards• Billable hours limit per fiscal year and case• Billing code definitions• Submitting reimbursable expenses
Expense Definitions	<ul style="list-style-type: none">• Travel• Other expenses• Required documentation
Compensation	<ul style="list-style-type: none">• Assigned counsel payment rates



PROCEDURE TOPIC	RECOMMENDATION
Continuing Education	<ul style="list-style-type: none">• Requirements• Submittal
Audit and Oversight	<ul style="list-style-type: none">• Authority• Full audit procedures• Disposition recommendation• Settlements, hearings, decisions of hearing officers• Suspension, removal, failure to comply, repayment• Complex litigation review
Complaints	<ul style="list-style-type: none">• Scope• Investigation



APPENDIX F: SAMPLE COMMUNICATION SCHEDULE

This change management communication schedule can be used at all transition phases to support standard and thorough communications.

TIMEFRAME	AUDIENCE	SENDER	MESSAGE
Two months prior to target implementation	All involved LOPD staff and contracted attorneys	Senior Leader	Introduction to Transition <ul style="list-style-type: none">● Explain why LOPD is moving to hourly rates, and include data to support the explanation. Consider sharing case studies of similar successful transitions.● Explain the benefits that contracted attorneys will personally see.● Introduce the transition timeline and any support that LOPD will provide to contractors.
Several days after first communication	Contracted attorneys	Direct Supervisor(s)	Transition Details <ul style="list-style-type: none">● Tell each person how they will individually be impacted and explain what changes they need to make.● Explain what resources are available and detail the support that LOPD is providing to contractors.● Lay out the next steps contracted attorneys should take.● Remind contracted attorneys what the benefits of hourly billing will be for them.
One month prior to target implementation	Contracted attorneys	Senior Leader	Transition Reminder <ul style="list-style-type: none">● Check in prior to transition.● Remind contracted attorneys of the upcoming change and LOPD's expectations for the transition.● Remind contracted attorneys about the resources available and what they need to have in place by the day of implementation.
One week prior to target implementation	Contracted attorneys	Direct Supervisor(s)	Transition Reminder <ul style="list-style-type: none">● Check in prior to transition.● Remind contracted attorneys of the upcoming change and LOPD's expectations for the transition.



TIMEFRAME	AUDIENCE	SENDER	MESSAGE
			<ul style="list-style-type: none"> ● Direct contracted attorneys toward available resources.
Day of target implementation	All involved LOPD staff and contracted attorneys	Senior Leader	<p>Go-Live Announcement</p> <ul style="list-style-type: none"> ● Alert all stakeholders on the day of implementation.
Four to six months post-implementation	All involved LOPD staff and contracted attorneys	Senior Leader	<p>Reflection</p> <ul style="list-style-type: none"> ● Update all stakeholders on the benefits LOPD has seen from change. ● Thank all parties for their efforts.
Ongoing Program Management	Variable	Variable	<p>After implementation, LOPD should adopt a standard program management cadence. For example:</p> <p>Monthly</p> <ul style="list-style-type: none"> ● Case assignment ● Contract attorneys submit invoices ● LOPD reviews budgets and disperses payment <p>Quarterly</p> <ul style="list-style-type: none"> ● LOPD prepares budget reports ● Contract attorney feedback session to identify challenges with hourly billing <p>Annually</p> <ul style="list-style-type: none"> ● Contract renewal ● Contract attorney feedback session to review annual themes ● Updates/revisions to the billing model including hourly rates as needed



APPENDIX G: HOURLY RATE DATA

Contracted attorney hourly rates should represent reasonable compensation when evaluated from a net earnings (i.e., take-home pay) perspective, which means a contracted attorney's rate must account for more than what would be shown in an employee's hourly salary rate. As notated in Principle 2 of the ABA Ten Principles of a Public Defense Delivery System, "attorneys should be paid a reasonable fee that reflects the cost of overhead and other office expenses, as well as payment for work."¹⁵ The Principle further states that the calculated rate should be "comparable to other publicly funded lawyers." This Principle underscores the importance of equity in pay structures across similar professions to ensure fairness and maintain a high standard of legal representation for the indigent. By aligning the hourly rates of public defense lawyers with their counterparts in other publicly funded sectors, the system upholds a sense of justice within the legal community and promotes a more attractive and competitive career option for potential and existing legal practitioners. This comparability is crucial for fostering a dedicated and proficient public defense workforce, as well as ensuring levels of recruitment and retention necessary to effectively cover caseloads.

Gross pay is the starting point, representing the total amount earned before any deductions are made against it. Net earnings represent the amount remaining after taking gross pay and subtracting all deductions (taxes and benefits) and office overhead costs. Therefore, a formula for calculating reasonable compensation for contracted attorneys should incorporate salaries, employee payroll taxes, employee benefit costs, office overhead costs, and a conservative profit margin estimate.



Payroll taxes include federal, state, and local taxes ranging from Social Security, Medicare, self-employment, Federal Unemployment Tax Act (FUTA), and state unemployment taxes. Self-employed contractors must pay both employee and employer shares of Social Security and Medicare, which can double the amount due. The cost of employee benefits may cover a more comprehensive array of costs but should typically

¹⁵ Principle 2, [ABA 10 Principles of a Public Defense Delivery System](#) (2023)



include health insurance and retirement benefits. Overhead cost percentages and profit margins vary widely depending on an organization's size, location, and specialty.

Including profit in calculating a contractor's pay rate is essential for several reasons. Contracting often involves risks; profit can incentivize contractors to both take on these risks and deliver quality work. Contractors are businesses that need to make a profit to sustain their operations, invest in their growth, and compete effectively in the market. Without profit, a contractor may not be able to continue providing services in the long term.

Average Market Hourly Salary

- For each position, we used the statewide average market pay in New Mexico, using the parameters to build the comparative profile, including the number of employees, location, industry NAICS code, and annual budget.

Payroll Taxes: 10.35%

- Social Security + Medicare and state taxes

Benefits: 30%

- According to the U.S. Bureau of Labor Statistics, the average cost of benefits for all civilian workers was 31.7% of total compensation in 2020.

Office Overhead: 40% (attorneys); 20% (support staff)

- The ABA reports that typical overhead costs at law firms can range anywhere from 35% to 50%. A 2020 report from software firm Clio reported that overhead expenses for sole practitioners tended towards the lower end of that range.¹⁶ However, Thomson Reuters reported in 2023 that overhead costs for law firms are rising industry-wide, which may place overhead costs closer to the higher end of that range.¹⁷

Profit: 10%

- According to industry research firm IBISWorld, profit margins for law firms in the U.S. averaged roughly 20% over the past five years through 2023.¹⁸

¹⁶ Clio. (2020). Legal Trends Report. Retrieved from <https://www.clio.com/resources/legal-trends/2020-report>

¹⁷ Thomson Reuters. (2023). Growing expenses hamper Midsize law firm profitability: Firms still feeling the pinch of increasing lawyer costs. Retrieved from <https://www.thomsonreuters.com/en-us/posts/legal/midsize-law-firms-expenses>

¹⁸ *Industry Report - Law Firms in the U.S.* IBISWorld. Oct. 2023.



RATE CALCULATIONS

Using the percentages and formula above, we calculated hourly rates based on the statewide market compensation data as the starting point, referred to as the Market Calculated Rate.

Attorney Market Salary Rate – New Mexico (Statewide)

LITIGATION ATTORNEYS	MARKET PAY RATE	PAYROLL TAXES	BENEFITS	TOTAL EMPLOYEE COST	OVERHEAD	COST + OVERHEAD	PROFIT	HOURLY BILL RATE
25th Percentile	\$52	\$5	\$16	\$73	\$29	\$102	\$10	\$112
50th Percentile	\$59	\$6	\$18	\$83	\$33	\$116	\$12	\$128
75th Percentile	\$68	\$7	\$20	\$95	\$38	\$133	\$13	\$146

Attorney Average of Other New Mexico Agencies

TYPE	HOURLY WAGE	PAYROLL TAXES	BENEFITS	TOTAL EMPLOYEE COST	OVERHEAD	COST + OVERHEAD	PROFIT	HOURLY BILL RATE
New Mexico (Low)	\$38	\$4	\$11	\$53	\$21	\$74	\$7	\$81
New Mexico (Midpoint)	\$47	\$5	\$14	\$66	\$26	\$92	\$9	\$101
New Mexico (Max)	\$69	\$7	\$21	\$97	\$39	\$136	\$14	\$150



APPENDIX H: COST ESTIMATE DETAIL

BASE RATE TYPE DELPHI CATEGORY	CASES	CURRENT COST	DELPHI HOURS	COST OF HOURLY
High-Degree Felony	164	\$1,066,000	58,628	\$8,794,196
Child Abuse/Child Sex Crime	4		506	\$75,900
Crimes Against Person	12		608	\$91,206
Drug Crimes, Property Crimes, Status Offenses	1		33	\$4,878
Murder	147		57,481	\$8,622,212
1st Degree Felony	198	\$188,100	14,204	\$2,130,551
Child Abuse/Child Sex Crime	55		6,958	\$1,043,625
Crimes Against Person	92		4,662	\$699,246
Drug Crimes, Property Crimes, Status Offenses	42		1,366	\$204,876
Murder	3		1,173	\$175,964
Traffic and Other Minor Crimes	6		46	\$6,840
2nd Degree Felony	1,017	\$945,810	52,955	\$7,943,276
Child Abuse/Child Sex Crime	61		7,717	\$1,157,475
Child Pornography Cases	3		532	\$79,812
Crimes Against Person	306		15,505	\$2,325,753
Drug Crimes, Property Crimes, Status Offenses	577		18,764	\$2,814,606
DWI	12		260	\$39,042



BASE RATE TYPE DELPHI CATEGORY	CASES	CURRENT COST	DELPHI HOURS	COST OF HOURLY
Juvenile Delinquency	5		131	\$19,673
Murder	22		8,603	\$1,290,399
Serious Youthful Offender	3		1,137	\$170,564
Traffic and Other Minor Crimes	27		205	\$30,780
Youthful Offender	1		101	\$15,173
3rd Degree Felony	2,513	\$2,261,700	139,367	\$20,905,016
Child Abuse/Child Sex Crime	367		46,426	\$6,963,825
Crimes Against Person	1,274		64,554	\$9,683,037
Drug Crimes, Property Crimes, Status Offenses	727		23,642	\$3,546,306
DWI	25		542	\$81,338
Juvenile Delinquency	7		184	\$27,542
Murder	8		3,128	\$469,236
Traffic and Other Minor Crimes	104		790	\$118,560
Youthful Offender	1		101	\$15,173
4th Degree Felony	7,319	\$5,708,820	275,229	\$41,284,406
Child Abuse/Child Sex Crime	52		6,578	\$986,700
Crimes Against Person	2,090		105,900	\$15,885,045
Drug Crimes, Property Crimes, Status Offenses	4,734		153,950	\$23,092,452



BASE RATE TYPE DELPHI CATEGORY	CASES	CURRENT COST	DELPHI HOURS	COST OF HOURLY
DWI	136		2,950	\$442,476
Juvenile Delinquency	21		551	\$82,625
Murder	7		2,737	\$410,582
Probation Violation	9		47	\$6,980
Serious Youthful Offender	1		379	\$56,855
Traffic and Other Minor Crimes	268		2,037	\$305,520
Youthful Offender	1		101	\$15,173
Juvenile	556	\$233,520	22,738	\$3,410,708
Child Abuse/Child Sex Crime	18		2,277	\$341,550
Crimes Against Person	183		9,273	\$1,390,892
Drug Crimes, Property Crimes, Status Offenses	87		2,829	\$424,386
DWI	18		390	\$58,563
Juvenile Delinquency	142		3,725	\$558,699
Murder	5		1,955	\$293,273
Probation Violation	72		372	\$55,836
Serious Youthful Offender	1		379	\$56,855
Traffic and Other Minor Crimes	16		122	\$18,240
Youthful Offender	14		1,416	\$212,415



BASE RATE TYPE DELPHI CATEGORY	CASES	CURRENT COST	DELPHI HOURS	COST OF HOURLY
Misdemeanor DWI/DV	3,838	\$1,381,680	141,978	\$21,296,657
Child Abuse/Child Sex Crime	1		127	\$18,975
Crimes Against Person	2,068		104,786	\$15,717,834
Drug Crimes, Property Crimes, Status Offenses	11		358	\$53,658
DWI	1,657		35,940	\$5,391,050
Traffic and Other Minor Crimes	101		768	\$115,140
Misdemeanors	5,686	\$1,250,920	119,164	\$17,874,674
Child Abuse/Child Sex Crime	17		2,151	\$322,575
Crimes Against Person	1,215		61,564	\$9,234,608
Drug Crimes, Property Crimes, Status Offenses	753		24,488	\$3,673,134
DWI	149		3,232	\$484,772
Juvenile Delinquency	14		367	\$55,083
Murder	1		391	\$58,655
Probation Violation	1		5	\$776
Traffic and Other Minor Crimes	3,535		26,866	\$4,029,900
Youthful Offender	1		101	\$15,173



MOSSADAMS