

Legislative Finance Committee

November 15, 2023



NEW MEXICO
LAW OFFICES OF THE
PUBLIC DEFENDER

**Thomas Joseph Clear III, Chair Public
Defender Commission**

Bennett J. Baur, Chief Public Defender

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[LOPD FY2025 Strategic Plan and Annual Report](#)

is located on our website at

www.lopdnm.us/about-us/.



New Mexico Public Defender Commission

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New national workload standards confirm shortage for LOPD

The study finds that effective public defense, as guaranteed by the Constitution, now requires over twice as much time as previously thought.

-- National Public Defense Workload Study

A justice system burdened by triage risks unreliability, denying all people who rely on it — victims, witnesses, defendants, and their families and communities — efficient, equal, and accurate justice.

Annual caseload

assignments

78,493

LOPD Cases Assigned by Fiscal Year



Attorneys we have

In-house + contract

349

FY25 Budget Request seeks 30 attorney FTE and 30 core staff, investigators and social workers

Attorneys we need

for total case assignments

897+

According to ABA Workload Study of NM LOPD Jan. 2022

Budget

20.8%

Current

\$71.7_m

Ask

\$86.6_m

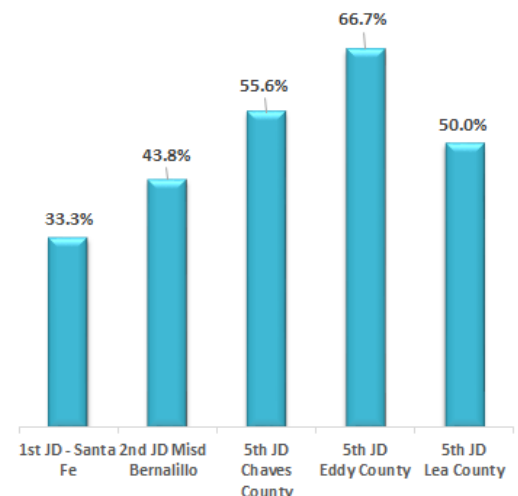
Vacancy Rate

FY23 - recruiting challenges due to workload and pay, especially in rural locations

Current statewide staff and attorney vacancy rate

14%

Attorney vacancy rate by office June 2023





FY25 BUDGET REQUEST

Current Year General Fund budget is \$71.7 million, including an additional \$6.3 million and 8 additional FTE.

We received an additional \$4 million for staff pay and funding for additional FTE as well as \$1.9 million for contract attorney rate increases and \$414 thousand for expert witness cost increases.

We also received nonrecurring appropriations of \$4 million total for this fiscal year and next for Public Attorney Fund initiatives (restricted, uses defined by law), \$2.5 million in C2 funds for IT needs and attorney tools and \$80 thousand for services provided by LOPD and \$150 thousand for transcription services from the junior bill (SB 192).

So far through FY24, LOPD has utilized the additional resources to their fullest extent.

LOPD has used the funding to build on legislative increases of 8% for career employees (including 2% specifically carved out for LOPD by the Legislature) resulting in 15.3% increases for career staff and 13.4% increase for probationary staff.

All 8 new FTE added in FY24 are filled as of November 2023 and include 2 paralegals, 3 attorneys, a legal associate, a case manager, and a IT help desk staffer. All but 2 of these employees work in our rural offices.

LOPD also increased contract attorney base compensation rates by 20% and is onboarding critically needed new expert witness for trials.

The agency vacancy rate has fallen to 15% overall. 19% of attorney positions are vacant while only 10% of core staff positions are unfilled.

LOPD was selected as the 2023 recipient of the Clara Foltz Award from the National Legal Aid and Defense Association recognizing that LOPD exemplifies best practices, expands access to justice, and uses creative and promising new methods to improve public defense.

LOPD faces numerous challenges which necessitate continued investment, including rising case levels and disparity when compared with the rest of the judicial system.

Initial projections indicate case assignments may grow 11% over the course of FY24 compared with FY23. Not only did FY23 case assignments surpass pre-pandemic levels, but felony case assignments far surpassed levels over the last six fiscal years.

LOPD remains underfunded when compared with our DA counterparts. When indexed to FY10, the DA budget has grown 141% while LOPD's grew 67%; less than half the growth rate of the DA budget over the last 15 years.

Our budget request is well researched and based on the recommendations of top-tier entities such as the American Bar Association, Moss Adams, and the JFA Institute.

Our budget request reflects consistent, systemic, and recurring needs that remain under-resourced and are directly linked to our ability to provide effective assistance of counsel.

Planning ahead and fiscal responsibility are key, especially when considering the state's economic outlook. However, public safety remains a stated priority of the committee – LOPD is integral to that priority.

FY25 BASE BUDGET INCREASE REQUEST
\$14,912,226 DOLLAR INCREASE
20.8% PERCENT INCREASE

CONTINUE TO IMPLEMENT ABA NEW MEXICO WORKLOAD STUDY RECOMMENDATIONS FOR ADEQUATE DEFENSE TEAM STAFFING TO IMPROVE REPRESENTATION, INCREASE DIRECT SUPPORT TO CLIENTS AND REDUCE RECIDIVISM

REQUESTED ADDITIONAL FUNDING: \$13,220,441

- 60 FTE INCLUDING 30 ATTORNEYS & 30 CORE STAFF (\$6.21 MILLION)
- ESSENTIAL COMPENSATION FOR CONTRACT ATTORNEYS CREATING MORE PAY PARITY WITH STATE CIVIL CONTRACT ATTORNEYS, INCLUDING FUNDING TO INCREASE BASE RATES ON CASES, AND FUNDING FOR COMPLEX CASE COMPENSATION (\$4.88 MILLION)
- SUPPORT PAY EQUITY AND PAY PARITY WITH DISTRICT ATTORNEYS AND OTHER STATE ATTORNEYS (\$2.13 MILLION)

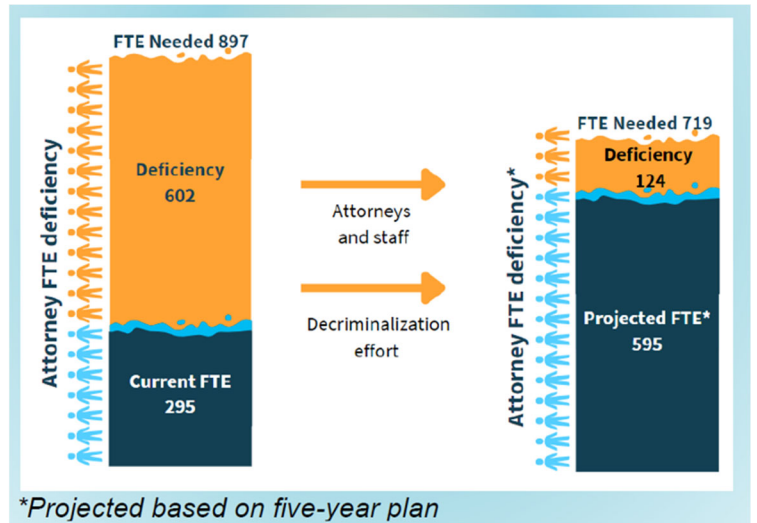
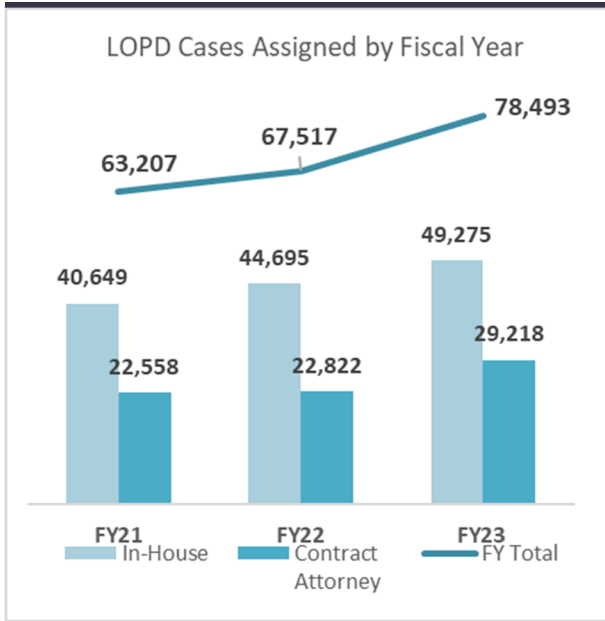
MAINTAIN ADEQUATE FUNDING FOR TRIAL AND OPERATIONAL NEEDS

REQUESTED ADDITIONAL FUNDING: \$1,691,785

- TRIAL EXPENSES – EXPERT WITNESS COSTS, MORE COMPETITIVE HOURLY RATES FOR CONTRACT SOCIAL WORKERS AND CONTRACT INVESTIGATORS
- OPERATIONAL NEEDS – LEASE ESCALATIONS, TRANSCRIPTION COSTS, AND EQUIPMENT

FY25 APPROPRIATION REQUEST

LOPD's FY25 request builds on its FY24 request, which was an initial step to implement recommendations from the American Bar Association's Workload Study, "The New Mexico Project," and the 5-year Plan, which is the first plan of its type for a public defender agency in the nation.



BASE BUDGET INCREASE

Continue to implement ABA New Mexico Workload Study Recommendations for adequate staffing to improve representation, increase direct support and reduce recidivism

The FTE in this request, combined with the 38 FTE added by the legislature for FY22, FY23 and FY24, does not achieve the study’s recommendation of an additional 602 attorneys; however, it is another step towards improving indigent representation by expanding direct client services, including social workers and case managers who assess client needs and match clients with available community services. The additional FTE will also bring LOPD closer to staffing parity with district attorney offices.

Request for an additional 60 FTE

- + 30 additional attorneys - 22 of whom will serve rural communities.
- + 8 investigators to assist attorneys with investigating and developing cases.
- + 12 core staff to assume administrative work to free up attorneys to focus on client representation, including building relationships and communicating with clients.
- + 10 FTE dedicated to the social work unit, including: 6 social workers and 4 case managers to assess client substance abuse and mental health needs and to engage clients towards recovery.

PAY PARITY FOR CONTRACT DEFENDERS – Essential compensation for contract defenders creating more pay parity with civil contract attorneys

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

New Mexico State Contractor Rates	
NM Risk Management Division Hourly Rate (civil cases)	Years of Experience
\$95	1 – 2 years
\$125	2 – 5 years
\$145	5 – 10 years
\$165	10 +

Transitioning from base rates to hourly rates

In order to provide effective assistance of counsel to all clients, LOPD must provide more competitive pay to LOPD contractors and in-house attorneys. During the last legislative session, LOPD was invited to a separate hearing to provide further information on LOPD’s actual funding needs. One of those needs is paying hourly rates to contractors on all case types.

Based on case numbers and average hours per case referenced in the workload study, it would require an additional \$88.6 million to pay contract attorneys an hourly rate of \$125 to provide representation, shown in the chart below.

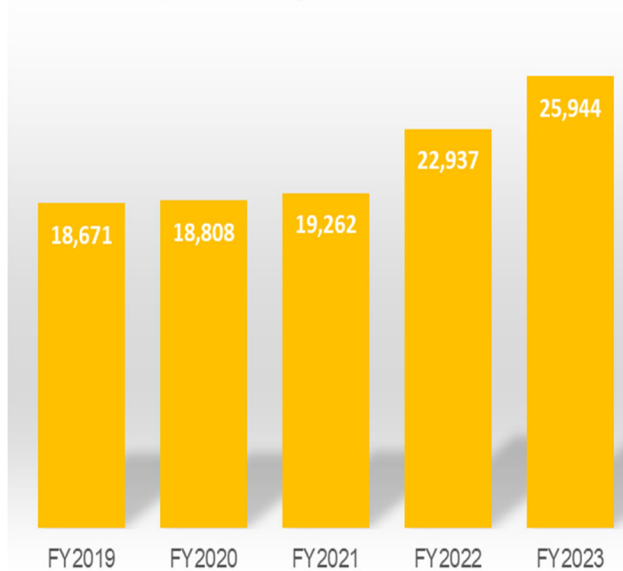
Estimated Cost of Hourly Rates for LOPD Contract Attorneys		
Annual Contract Attorney Hours By Case Type*	Hourly Rate	Estimated Annual Cost
708,574	\$125.00	\$88,571,750.00
*Source: 2022 ABA Workload Study, page 65.		

Decline in Contractors Statewide

The total number of cases assigned to contract attorneys remains close to prior year levels, while the number of contract attorneys accepting cases has declined. For example, LOPD lost an additional four contractors during the second quarter of FY23 – those attorneys were accepting cases in the Second Judicial District Court in Bernalillo County.

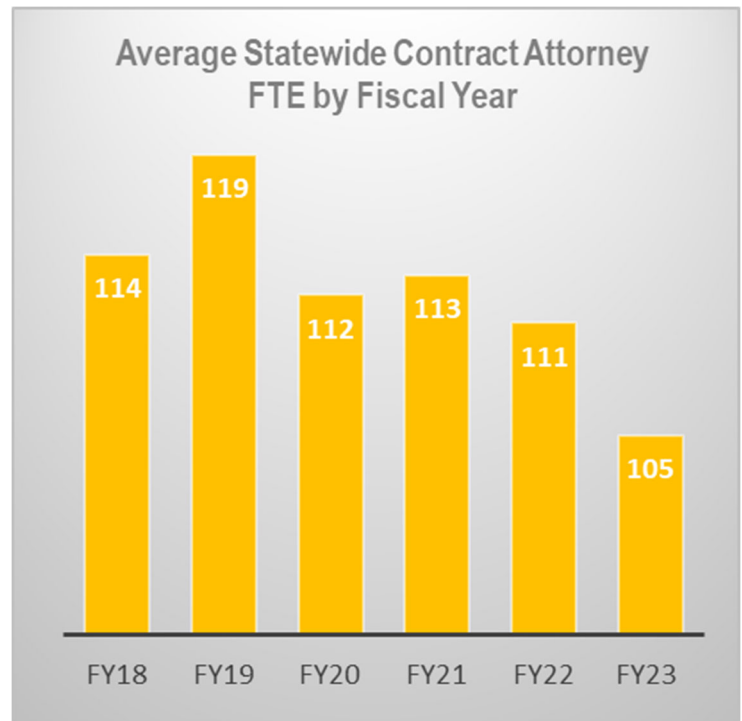
There are 3 New Mexico counties with zero attorneys residing in the county, and 10 counties with fewer than 10 resident attorneys. Increased funding will ensure lawyers are compensated such that they are willing to travel to fulfill the State’s constitutional requirements to provide reasonably effective representation for indigent New Mexicans living in rural communities and legal deserts.

Felony Case Assignments by Fiscal Year



LOPD is often tasked with paying more than one attorney on a given case because there are co-defendants – sometimes as many as six – which requires LOPD to pay several different attorneys, investigators, and experts on a case while the prosecution costs are relatively fixed.

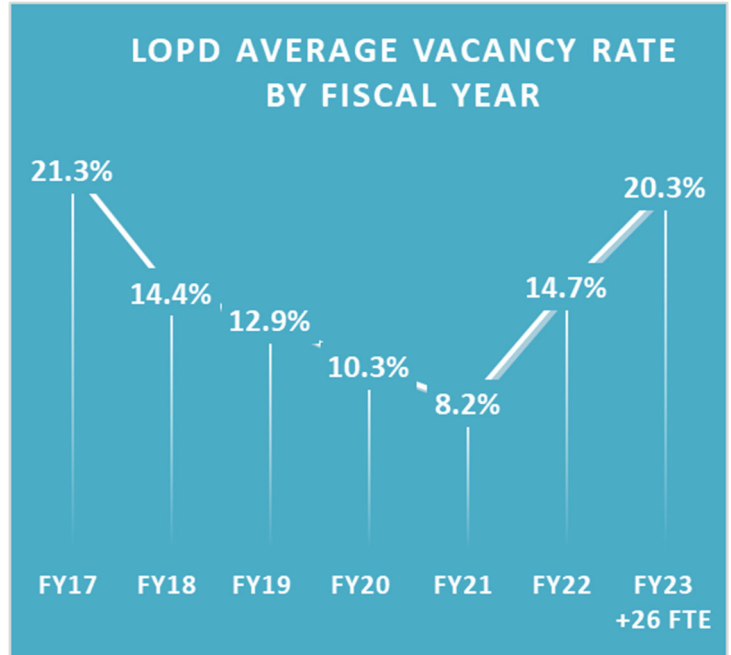
Average Statewide Contract Attorney FTE by Fiscal Year



LOPD is exploring contracting with a consultant or program evaluator to assess and provide a recommendation on a phased approach to convert from contract attorney base rates to hourly rates.

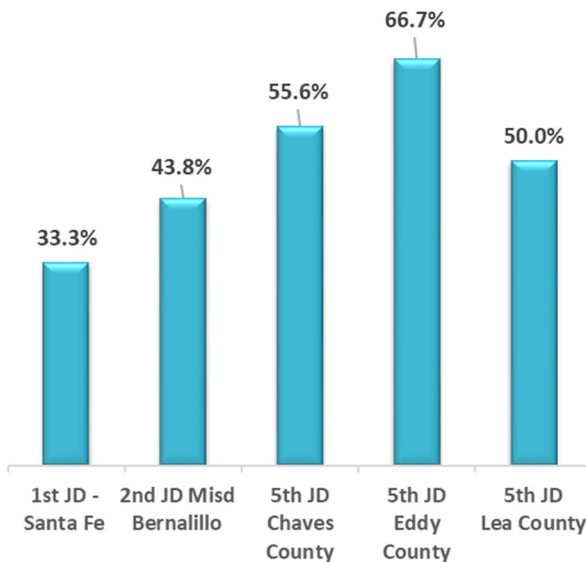
LOPD Vacancy Rate – data to support appropriation request

Prior to the pandemic in FY21, LOPD had successfully maintained low vacancy rates. Due to proactive recruitment, including the limited practitioner program and innovative placement of positions, LOPD was able to maintain a consistently low vacancy rate between FY17 and FY21. LOPD has evaluated processes to streamline hiring and proactively plan for anticipated retirements or resignations. As a result, LOPD has the capacity to add and fill additional positions allocated statewide.



LOPD aggressively posted and filled newly allocated FTE in FY24 and has significantly reduced its vacancy rate, as is demonstrated in the graphic below.

Attorney Vacancy Rates June 2023



However, LOPD was not spared from the “Great Resignation”. Regardless, LOPD prioritized hiring and the average vacancy rates in FY22 and FY23 were well below the statewide classified service averages.

Vacancy rate
(as of 11/13/2023)

14% Overall

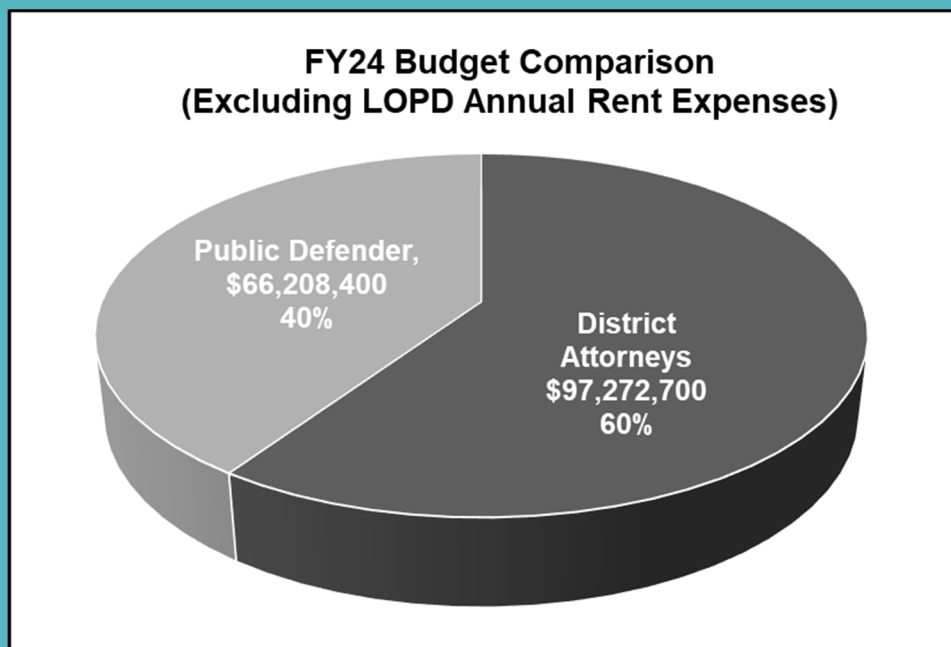
18% Attorney

10% Core Staff

BASE BUDGET INCREASE

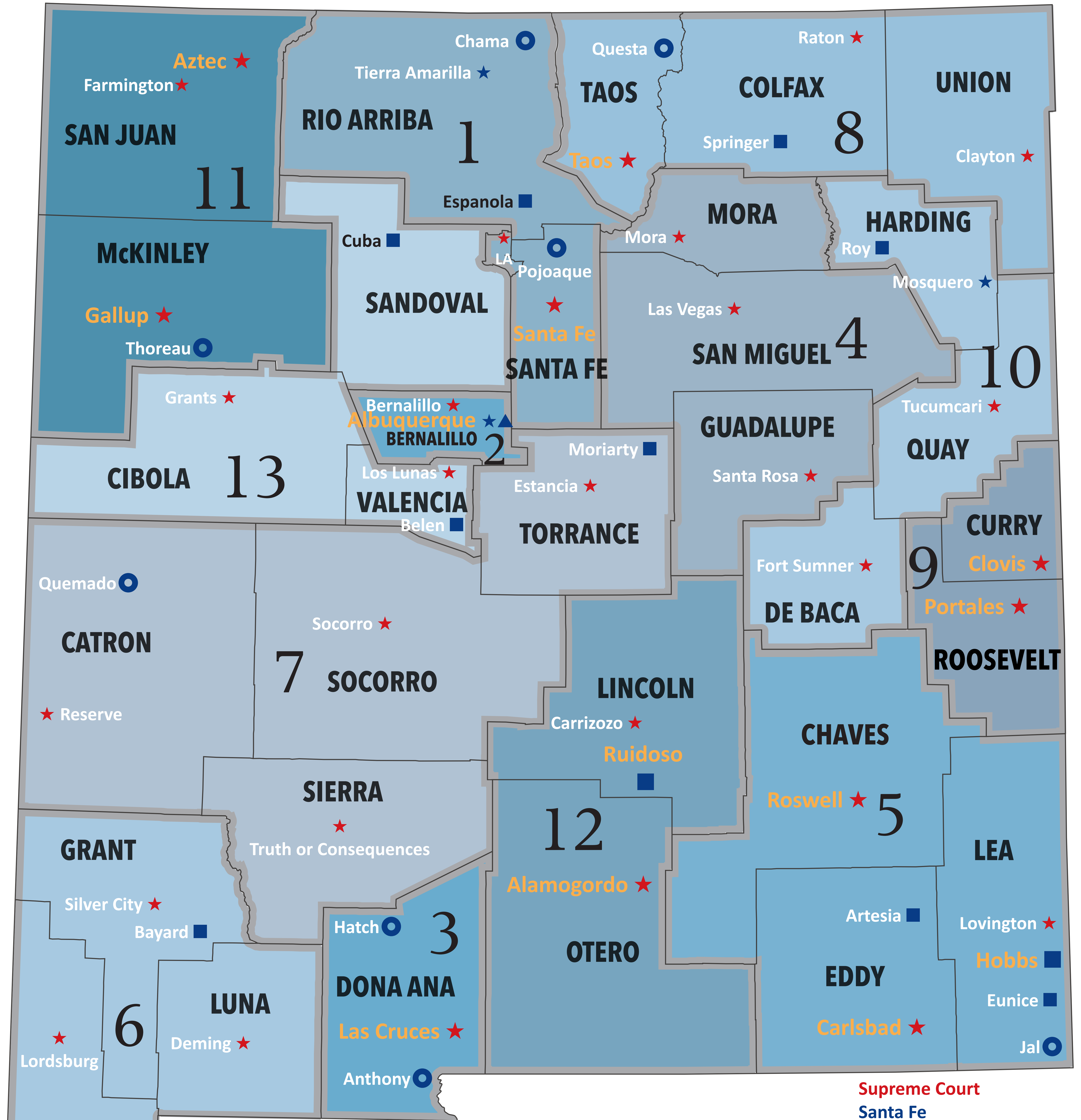
Funding for increased trial costs and operational expenses, including expert witnesses, more competitive hourly rates for contract social workers and investigators, transcription costs, equipment, and lease escalations

The budget request will help meet increased demand for investigators and social workers by contract defenders, who assist LOPD in meeting performance measures, by funding increased social worker and investigator contract hourly rates. Clients in the counties with LOPD offices have access to an integrated defense team with paralegals, investigators, social workers, and other staff assisting public defender attorneys with cases. Contract defenders must request funding for social workers or investigators to assist on a case, especially when a case is complex, likely to go to trial, or when clients have mental health or substance abuse issues.





LAW OFFICES OF THE PUBLIC DEFENDER and NEW MEXICO COURTS

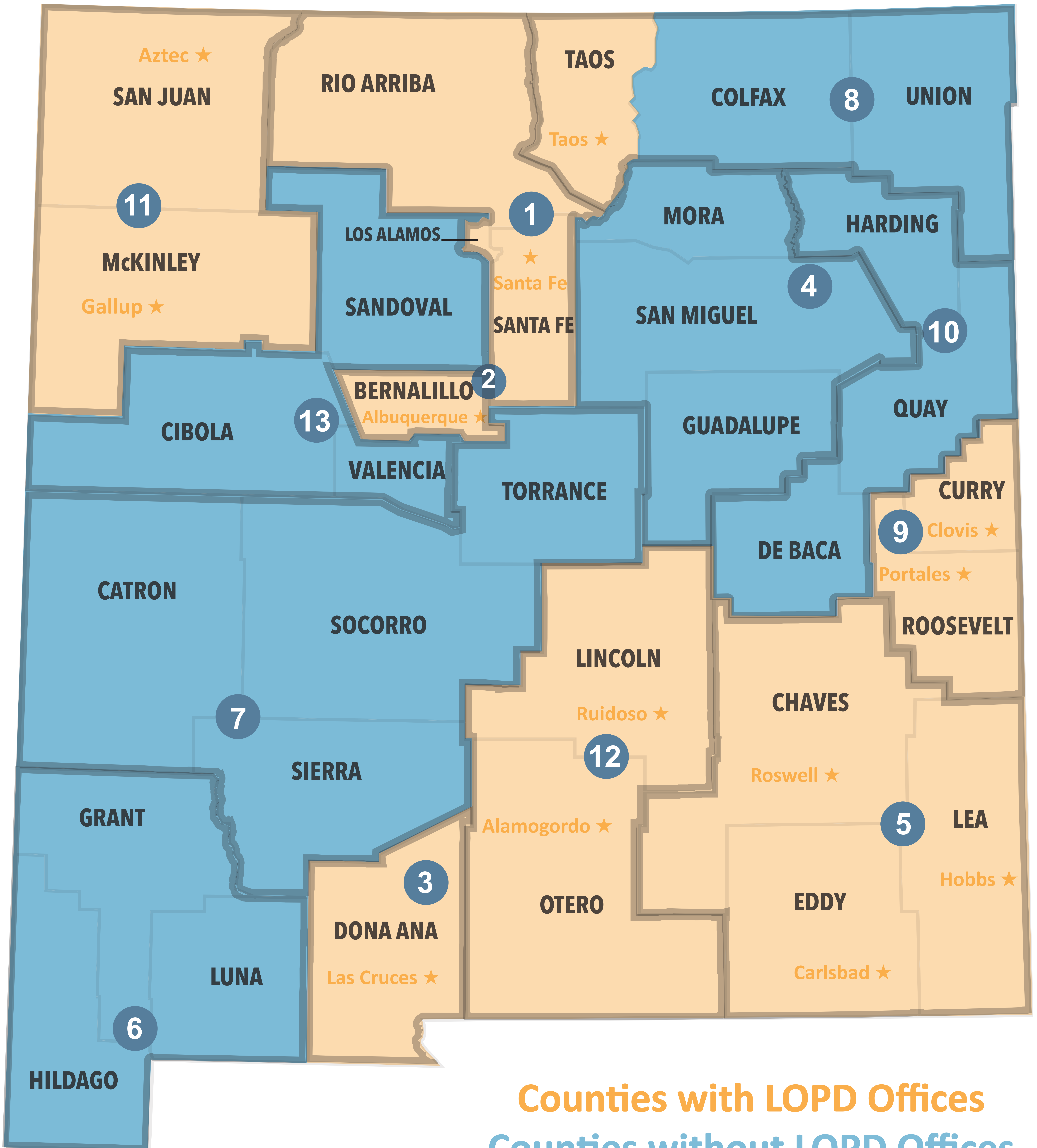


- | | | |
|---|--|---|
| <p>1st Judicial District Court
Santa Fe, Rio Arriba & Los Alamos</p> <p>2nd Judicial District Court
Bernalillo</p> <p>3rd Judicial District Court
Doña Ana</p> <p>4th Judicial District Court
San Miguel, Mora & Guadalupe</p> <p>5th Judicial District Court
Chaves, Eddy & Lea</p>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

- Supreme Court**
Santa Fe
- Court of Appeals**
Santa Fe & Albuquerque
- LOPD Offices in Gold**
- ★ District & Magistrate Courts**
- ★ District Court**
- ▲ Metropolitan Court**
- Magistrate Full Courts**
- Magistrate Circuit Courts**



LAW OFFICES OF THE PUBLIC DEFENDER and NEW MEXICO COURTS



Counties with LOPD Offices
Counties without LOPD Offices