

Summary

The right to counsel is a central principle embodied in the Bill of Rights. This resolution encourages states to ensure that all individuals accused of crimes are properly represented by counsel.

RESOLUTION IN SUPPORT OF PUBLIC DEFENSE

Resolution in Support of Public Defense

WHEREAS, the United States Constitution guarantees “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense”;

WHEREAS, the United States Supreme Court, federal and state courts, and federal and state constitutions, guarantee all who are accused of a crime the right to the assistance of counsel at all critical stages of the proceedings;

WHEREAS, those accused of a criminal offense who lack the personal resources needed to hire counsel to challenge the government’s evidence or present their case require access to publicly funded defense services;

WHEREAS, a robust defense function protects both the individual and the community;

WHEREAS, effective and independent defenders can shine a light on government overreach and abuses of power and preserve the protections of the Fourth, Fifth, and Sixth Amendments, protect the innocent from wrongful conviction, facilitate treatment, services, and other outcomes that reduce recidivism, and help ensure fair trials;

WHEREAS, the collateral consequences of even minor criminal charges create long-lasting barriers to employment, education, and housing;

WHEREAS, excessive caseloads prevent even the most dedicated of defenders from having the time needed to properly and fully investigate the government's accusations;

WHEREAS, inadequate compensation coupled with significant student debt prevents many skilled and committed attorneys from pursuing a career in public defense;

WHEREAS, assigned counsel rates that fail to keep pace with the basic costs of operating a law practice and fee structures that set limitations on compensation without regard to the needs of individual cases deter meaningful participation in public defense by the private bar;

WHEREAS, inadequate support for public defense services can cause individuals to languish in jail without counsel for prolonged periods, or enter guilty pleas without the benefit of counsel; and

WHEREAS, the fundamental principles of equality and justice cannot be fully realized under our adversarial system without a well-resourced public defense system and prompt access to effective assistance of counsel;

THEREFORE, LET IT BE IT RESOLVED:

Access to Public Defense Services:

That every person accused of a crime be afforded counsel in all cases in which incarceration can occur. States should strive to make counsel available as early as possible.

Effective Public Defense Delivery Systems:

That whenever a jurisdiction's population, needs, and caseload warrant it, a public defense delivery system includes a public defender office as well as meaningful participation of the private bar and provides representation consistent with the best practices in the legal community;

That public defense delivery systems be adequately funded to ensure attorneys have reasonable workloads so as to allow them to provide ethical and competent representation pursuant to prevailing professional norms;

That public defense providers regularly receive relevant training;

That public defense providers have access to appropriate support services such as investigators, social workers, and experts; and

That compensation for public defense providers is sufficient to ensure the recruitment and retention of qualified and skilled advocates taking into consideration for public defenders the rates being paid to other government employees performing similar functions, and for court-appointed counsel the overhead costs and prevailing attorneys' fees for the jurisdiction.

Independence and Equality:

That to ensure the defense may fulfil its role in the adversarial system, the defense should be insulated from undue influence, involvement, and control by actors whose interests are directly or indirectly adverse to the attorney-client relationship. Supervision of the public defense system by the judiciary should be no greater than that which is exercised over the private bar; and

That in order to maintain a vibrant, healthy, and robust adversarial process the defense function be included as an equal and valued partner in the criminal justice system.

Approved By the ALEC Board of Directors: September 3, 2019



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RESOLUTION IN SUPPORT OF PUBLIC DEFENSE

Policy Status

Type: **Model Policy** Status: **Final** Date Introduced: **July 16, 2019**

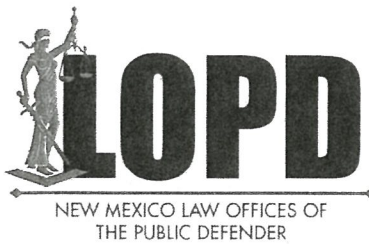
Date Finalized: **September 3, 2019**

Task Forces

- Criminal Justice

Tags

- AM19
- Criminal Justice



FY21 Base Budget Request—\$6,836,500, 12.3%

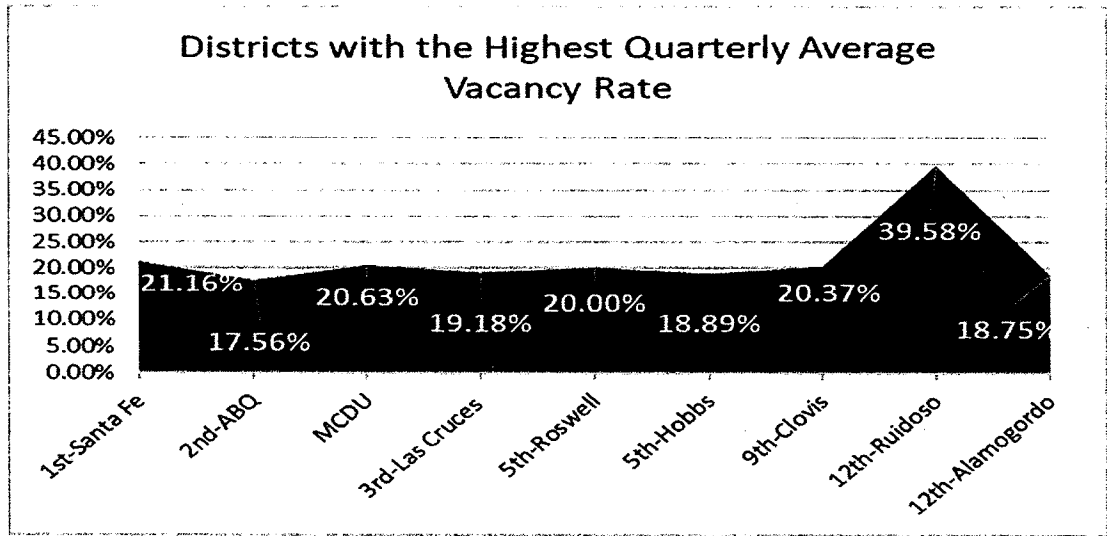
Base Budget Increase Request 1: Compensation for Contract Counsel to Improve Client Services Statewide and Expand Legislative Pilot Project to Pay Hourly Rates to Contract Defenders in Complex Cases and Expert Witnesses.

- ✓ Paying hourly rates on serious cases and allowing for complex case compensation will ensure lawyers are compensated such that they are willing to engage to fulfill the State's constitutional requirements to provide zealous representation for indigent New Mexicans.
- ✓ Increased filing of complex cases which require use of expert witnesses.
- ✓ Additional funding for hourly rate cases assigned to contract defenders.
- ✓ Total request for this increase is \$2,520,400, or an increase of 17.7%.

Base Budget Increase Request 2: 15 Attorneys and 30 Staff FTE to Improve Client Services Statewide and Reduce Recidivism

- ✓ Effective representation of clients requires attorneys to have caseloads that permit sufficient attention to defending the case, as well as familiarity with every client's mental health, addiction and other factors that lead to recidivism.
- ✓ Based on increased need for services to rural communities, covering pretrial detention hearings, preliminary hearings, and caseload reduction.
- ✓ The increased need is as follows:
 - Thirty staff including seven positions allocated to the statewide social work unit (social workers, mitigation specialists, and case managers), additional investigators and support staff for Alamogordo, Albuquerque, Aztec, Carlsbad, CCLS, Habeas, Hobbs, Las Cruces, Roswell, and Santa Fe.
 - Fifteen attorneys allocated between twelve offices: Alamogordo, Albuquerque, Appellate, Aztec, Carlsbad, Habeas, Hobbs/Lovington, Santa Fe/Rio Arriba, Las Cruces, Roswell, Major Crimes Defender, and an attorney allocated in CCLS to audit invoices for the hourly case project.
- ✓ Despite an overall reduction in vacancy rate, there are numerous rural offices that are consistently operating with vacancy rates between 17% and nearly 40%. The following graph reveals the LOPD offices that have been providing services to rural communities despite carrying the highest vacancy rates in FY2019.
- ✓ The total request for this increase is \$3,658,800.

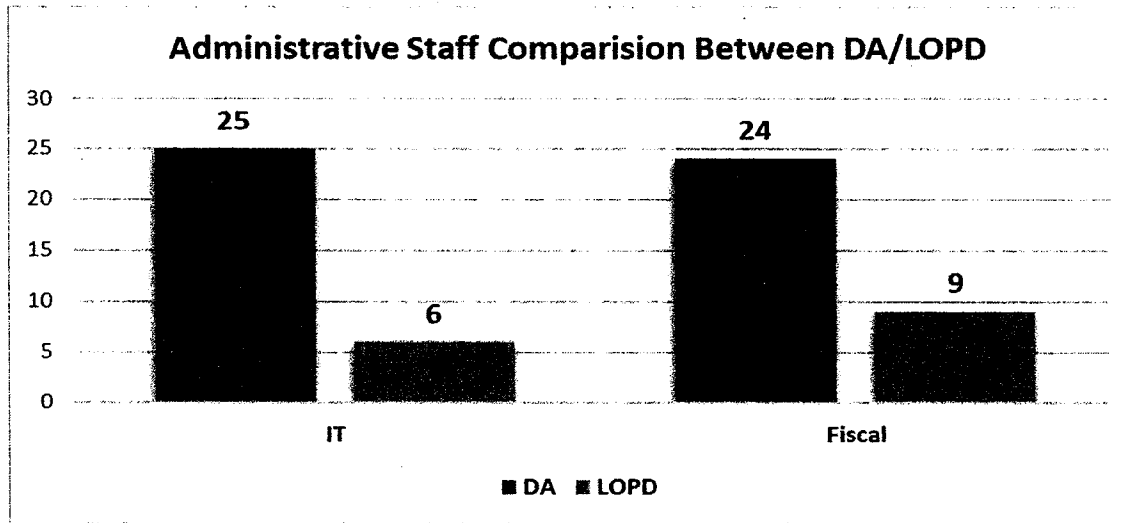
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Equal Percentage Increases Worsen the Problem

LOPD greatly appreciates legislative attempts to bolster its budget. Though the roles of the prosecution and defense are admittedly different, it is generally agreed that the prosecutors have historically received more funding than public defense. Prosecutors are budgeted for higher staffing levels and are served by both their in-house local administration and state-level administration for support. In addition, state and local law enforcement conducts the initial investigation for the cases. So, it must be noted that increasing the budget of the prosecuting entity by the same percentage not only widens the gap between the two entities but also imbalances the entire criminal justice system, threatening constitutional processes.

Part of the disparity is fueled by the fact that district attorney offices have in-house local chief financial officers, human resources staff, and information technology support, in addition to similar statewide resources provided by the Administrative Office of the



District Attorney, which far exceeds resources within LOPD.

LOPD has 45 administrative staff dedicated to serving the 439 FTE and 150 contractors, while also auditing and monitoring invoicing by contract defenders. Administrative staff includes fiscal, human resources, information technology, and administrative support staff.

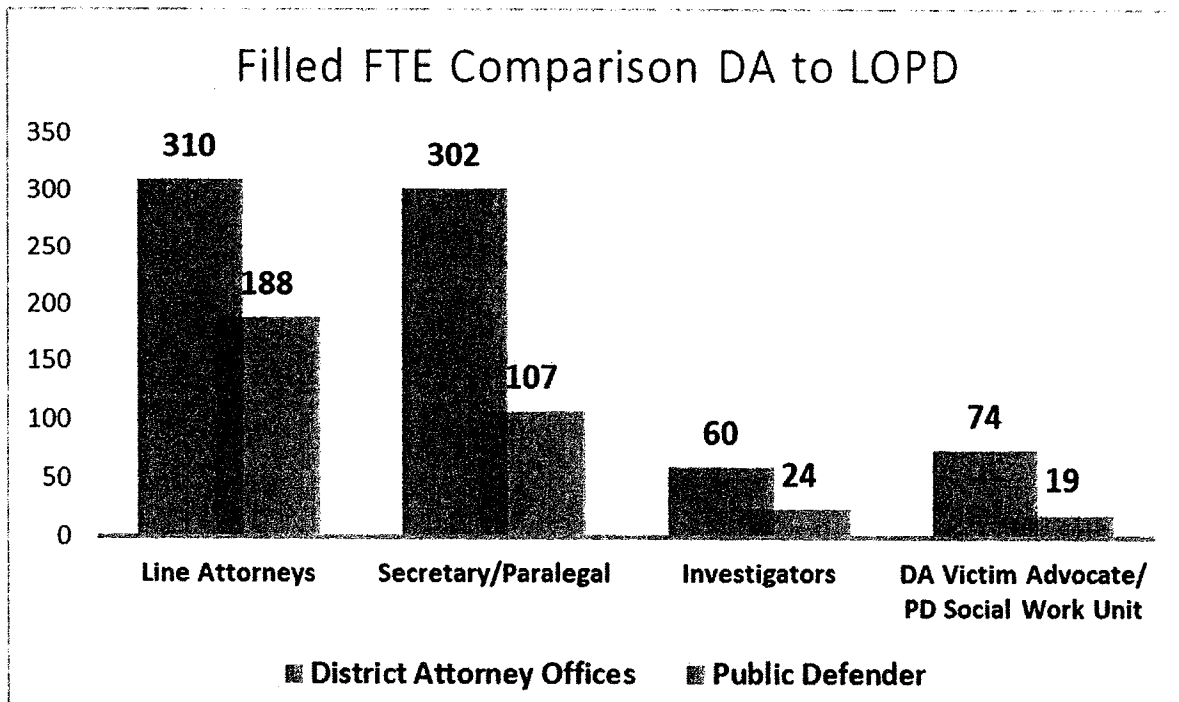
AODA and the district attorney's offices have a total of 223 "administrative staff". In addition, many district attorney offices have Deputy District Attorneys or other attorney supervisors that are not assigned cases, nor carry an active caseload as part of their duties. When compared to data compiled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

Filled FTE	DA	LOPD
Attorneys	310	188
Clerical	200	46
Investigators	60 *	24
Paralegals/Specialists	102	61
Victim Advocates/SW	74	19
IT	25	6
Fiscal	24	9

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

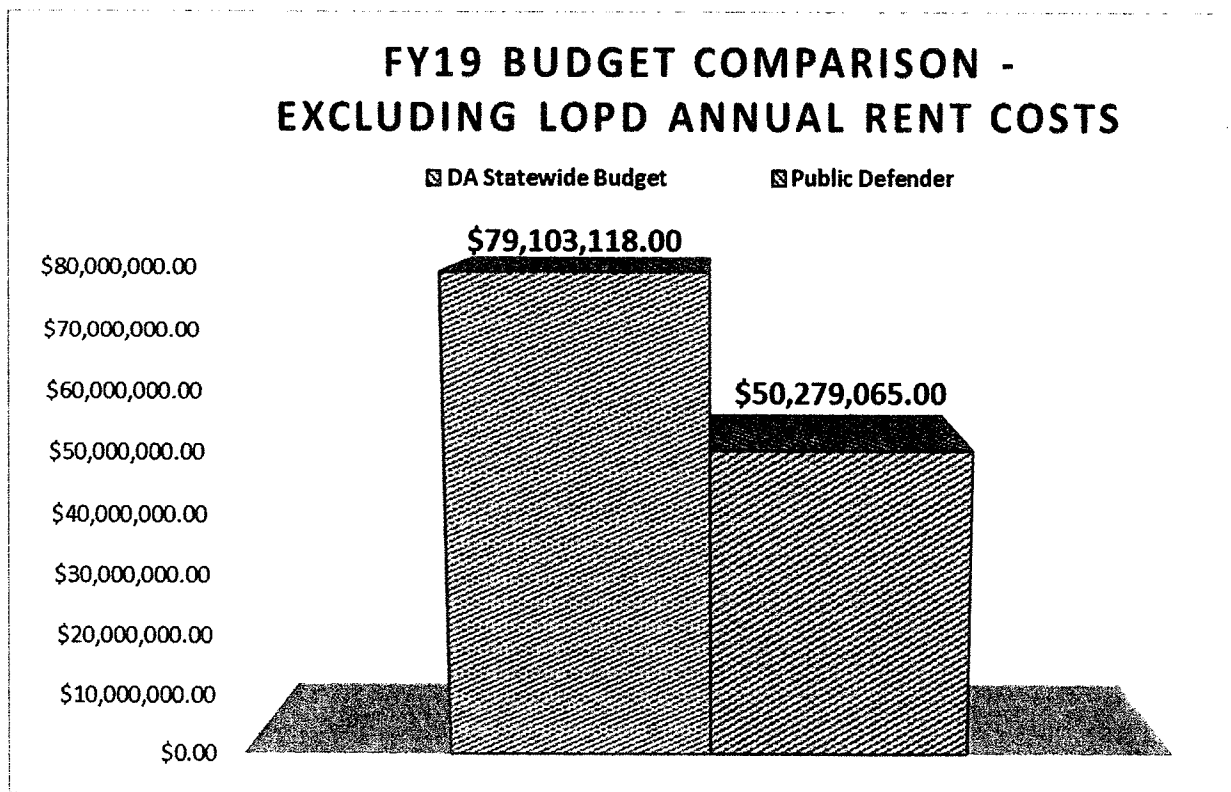
LOPD continues to advocate for the legislature to increase funding necessary for LOPD to "catch up" with others in the system, especially the prosecution. The greater

the gap between the two, the more harm to constitutional representation.



Base Budget Increase Request 3: Facilities Expenses of Escalating Rent, Additional Office Space, and Vehicles. Meet Demand for Non-Professional Experts.

- ✓ In FY2019, LOPD paid over \$2.4 million dollars in rent.
- ✓ LOPD leases and pays rent for space at all of its fifteen different offices. All other criminal justice partners, specifically the courts and district attorneys, are provided facilities by the state or county. In addition, due to proactive recruitment and innovative placement of positions to reduce vacancy rates, additional office space is needed in several cities. Funds are needed for additional space and the lease escalations.
- ✓ Purchase of eight vehicles to be distributed statewide to reduce personal vehicle use to limit liability for the state and employees subsidizing costs.
- ✓ 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 request funding for social workers or investigators to assist on a case, especially when a case is unusually complex, likely to be tried or includes a mental health or substance abuse issue.
- ✓ This request will assist to meet increased demand for non-professional experts (investigators and social workers) by contract defenders, which in turn assists LOPD in meeting performance measures.
- ✓ Total request for this increase is \$657,300.



Base Budget Increase Request 4: Continue Data Sharing with Criminal Justice Partners.

- ✓ Data Sharing initiative was funded in FY20 and is underway. The case management interface with SOPA requires annual funding for ongoing implementation due to annual changes in programming established by the Courts SOPA vendor.
- ✓ Data sharing assists in eliminating duplication of work by justice partners, increasing accuracy and improving timeliness on individual cases.
- ✓ The total request for this increase is \$40,000.

Base Budget Increase Request 5: Address Recruitment and Retention Difficulties in Underserved Communities.

- ✓ Recruitment and retention of attorneys and social workers in underserved communities is an ongoing challenge.
- ✓ LOPD has creatively used geographic pay differentials as a way to reward and acknowledge the willingness to serve New Mexico's rural communities.
- ✓ This funding will support the pay differential which provides an additional incentive to attorneys and social workers interested in dedicating their career to underserved communities.
- ✓ The total request for this increase is \$415,200.