

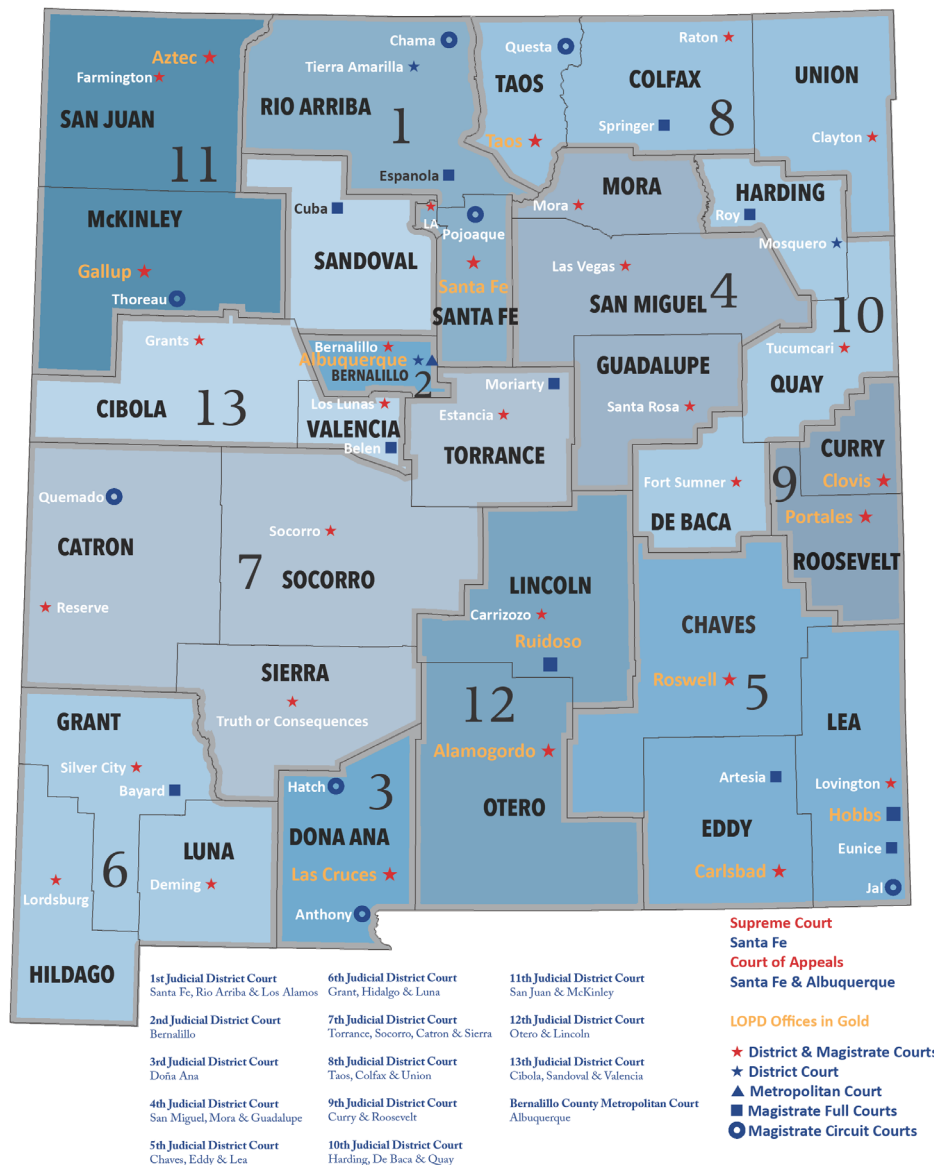
New Mexico Workload Study, 5-Year Plan and Upcoming Release of National Standards May 15, 2023

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LAW OFFICES OF THE PUBLIC DEFENDER and NEW MEXICO COURTS

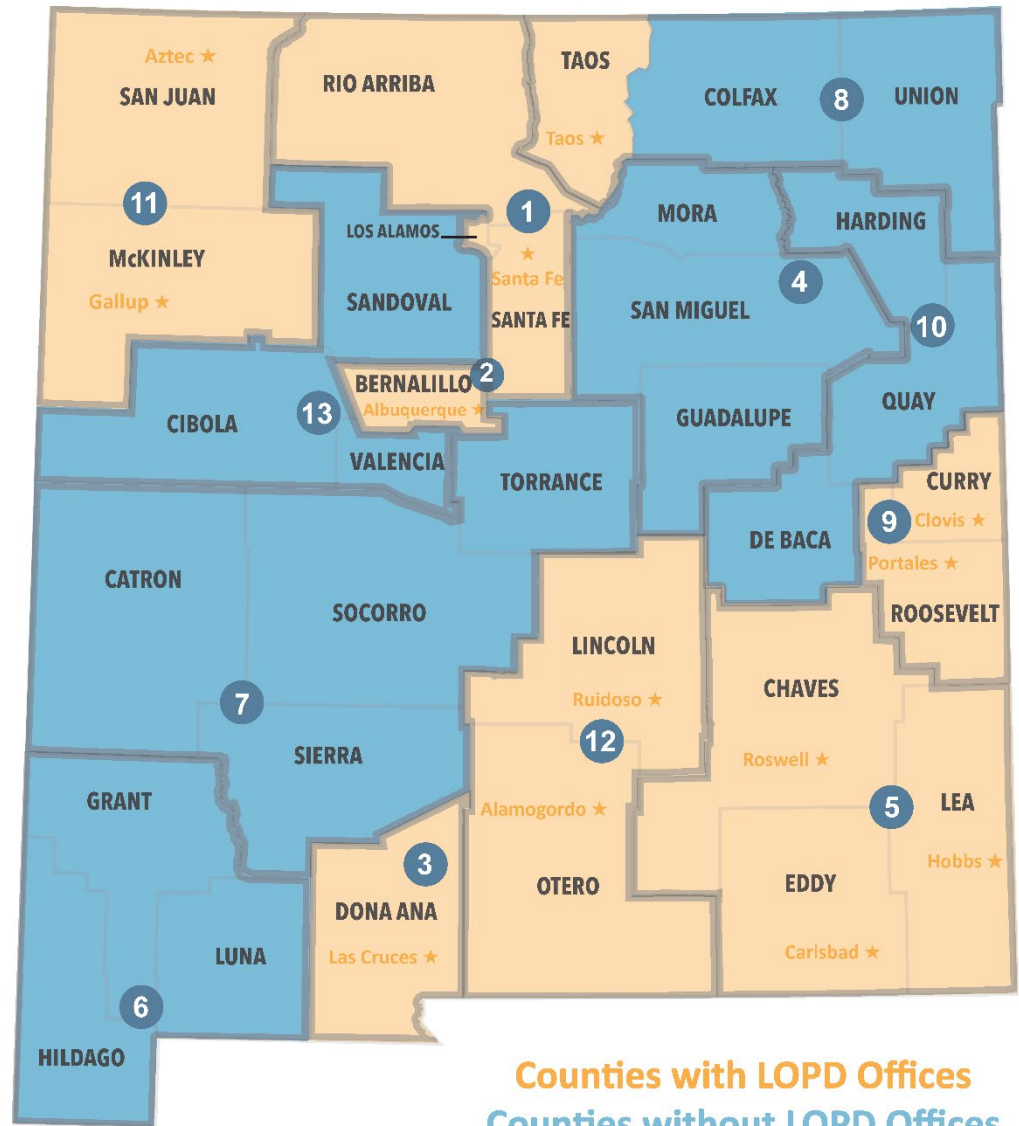


- Independent state agency since 2012
- Chief reports to Public Defender Commission – 11 appointed members
- 13 District Offices
- Mandate - indigent criminal defense
- 469 FTE:
 - 233 Attorneys
 - 236 Core Staff, including a Social Work Unit

- 100 Contract Defenders
- Base Rates
- Complex case compensation
- Assign approximately 68,000 cases annually
– 65% to in-house attorneys & 35% to contract defenders



LAW OFFICES OF THE PUBLIC DEFENDER and NEW MEXICO COURTS



Counties with LOPD Offices
Counties without LOPD Offices

Why a workload study?

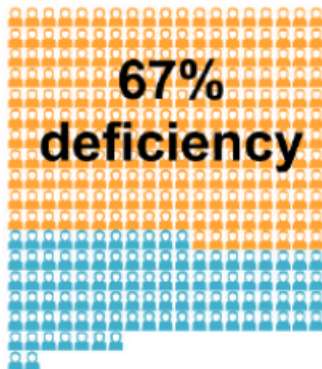
- Need more people and resources?
- Advocate and support need for funding
- Case control – Case refusal
- Lessons learned
 - Collect DATA!!!
 - Invested in case management
 - Data = Money
 - Grant \$



THE NEW MEXICO PROJECT

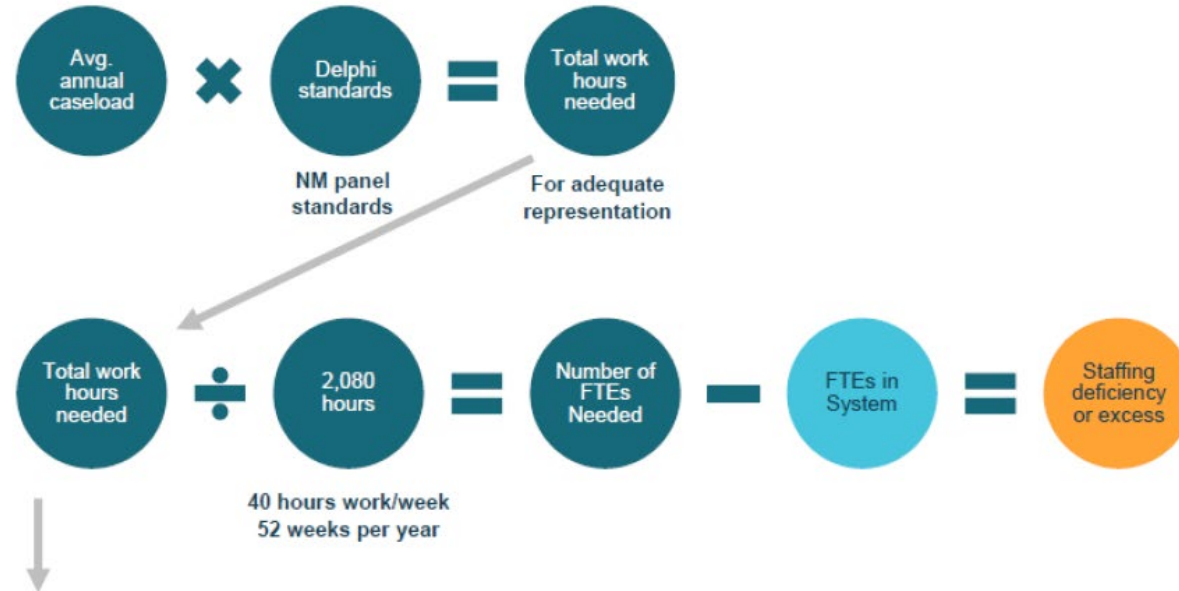
An Analysis of the New Mexico Public Defense System
and
Attorney Workload Standards

New Mexico faces a critical shortage of public defense attorneys

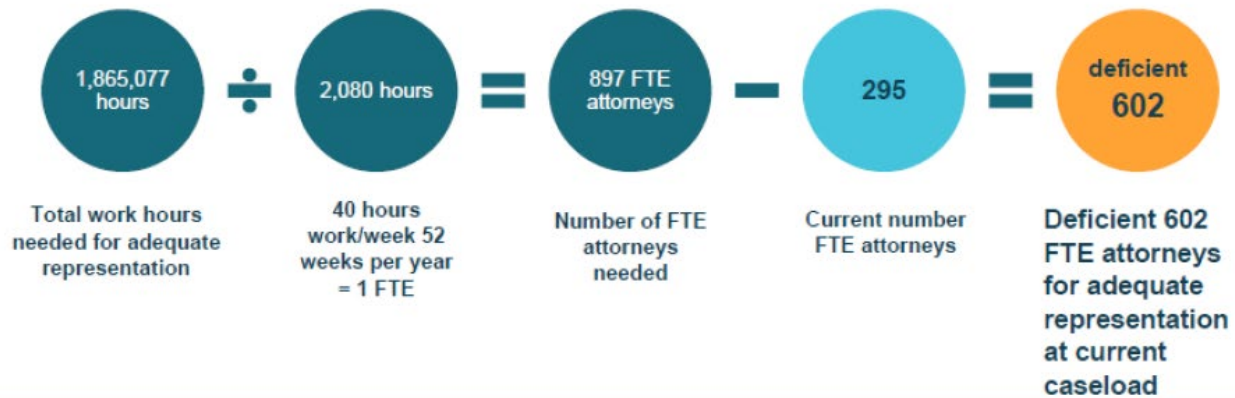


- A very conservative analysis shows that based on average annual caseload, the state needs an *additional* 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.
- In other words, with a consistent annual workload, New Mexico has only 33% of the public defense attorneys it needs to handle its adult and juvenile caseloads.

Systemic deficiency



New Mexico:

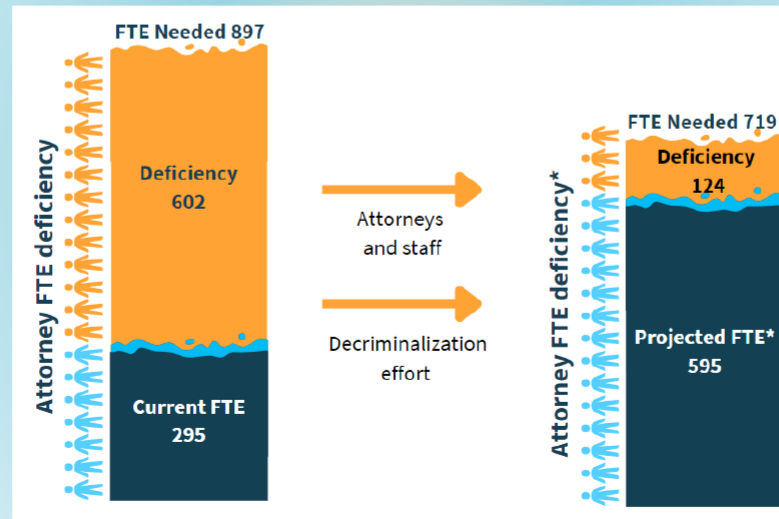


The New Mexico Public Defense System 5-Year Plan to Reduce Representation Deficiency

The five-year plan proposes tackling New Mexico's verified public defense resource deficiency from two sides:

- **Supply side factors** — adding to and reallocating resources within LOPD
- **Demand side factors** — reducing the caseload through decriminalization of non-violent crimes with no victim and sentencing reform

Ultimately, by adding additional attorney resources and reducing the average caseloads through the decriminalization process the attorney deficiency would be reduced from the current 602 Full Time Equivalent (FTE) attorneys to 124 FTE attorneys, as shown in the next graph.



**Projected based on five-year plan*

Impact on FTE

Ultimately, by adding additional attorney resources and reducing the average caseloads through a decriminalization process, the New Mexico public defense attorney deficiency would be reduced to 17% over five years, from a need of 602 to 124 FTE attorneys.

ATTORNEY DEFICIENCY

| | Year 0 | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|---|--------|--------|--------|--------|--------|--------|
| STAFFING IMPACTS | | | | | | |
| Additional funded attorney FTE (annual) | | 60 | 60 | 60 | 60 | 60 |
| Running total attorney FTE | | 60 | 120 | 180 | 240 | 300 |
| Additional funded core staff FTE (annual) | | 90 | 90 | 90 | 90 | 90 |
| Running total core staff | | 90 | 180 | 270 | 360 | 450 |
| Estimated attorney FTE hours saved per core staff (10%) | | 208 | 208 | 208 | 208 | 208 |
| Attorney hours saved annually | | 18,720 | 37,440 | 56,160 | 74,880 | 93,600 |
| Annual attorney FTE need reduction (more available time for casework) | | 9 | 9 | 9 | 9 | 9 |
| Running total attorney FTE need reduction | | 9 | 18 | 27 | 36 | 45 |
| DECRIMINALIZATION IMPACTS | | | | | | |
| Decriminalization - Annual FTE need reduction | | - | 50 | 48 | 20 | 15 |
| Running total FTE need reduction | | - | 50 | 98 | 118 | 133 |
| TOTAL IMPACT ON ATTORNEY DEFICIENCY | | | | | | |
| Attorney FTE Need | 897 | 888 | 829 | 772 | 743 | 719 |
| Projected FTEs | 295 | 355 | 415 | 475 | 535 | 595 |
| Remaining Attorney FTE Deficiency at end of Year | 602 | 533 | 414 | 297 | 208 | 124 |
| Remaining Attorney Deficiency | 67% | 60% | 50% | 38% | 28% | 17% |

Supply Side Factors – Staff and Attorney Needs

LOPD is requesting funding for a five-year plan to fund additional needed attorneys and support staff. This five-year plan increases LOPD's budget from 0.39% to 0.72% of the entire state budget by Year 5, increasing from the FY23 \$64.2M general fund appropriation to \$147.4M by FY28.

BUDGET IMPACTS

| | Year 0 | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|--|---------------|---------------|----------------|----------------|----------------|---------------|
| LOPD Operating Budget Trend | \$ 64,294,500 | \$ 67,027,016 | \$ 69,875,664 | \$ 72,845,380 | \$ 75,941,309 | \$ 79,168,815 |
| <i>Additional annual attorney FTE</i> | | 60 | 60 | 60 | 60 | 60 |
| <i>Additional annual core staff FTE</i> | | 90 | 90 | 90 | 90 | 90 |
| Cost to fund additional attorney FTE | \$ 8,730,120 | \$ 17,460,240 | \$ 26,190,360 | \$ 34,920,480 | \$ 43,650,600 | |
| Cost to fund additional core staff FTE | 4,917,870 | 9,835,740 | 14,753,610 | 19,671,480 | 24,589,350 | |
| Total Funding Needs by Year | \$ 80,675,006 | \$ 97,171,644 | \$ 113,789,350 | \$ 130,533,269 | \$ 147,408,765 | |
| Additional budget to be requested from State | \$ 13,647,990 | \$ 27,295,980 | \$ 40,943,970 | \$ 54,591,960 | \$ 68,239,950 | |

ESTIMATED ANNUAL WORKLOAD

| | [1] | [2] | [2] | [5] | | | [6] |
|--|-----------------------|---------------------------------|--------------------------|---|-------------------------|------------------|---------------|
| Case Type | Delphi Hours Per Case | Total Estimated Annual Caseload | Total Hours by Case Type | Decriminalization - Reduction in Caseload | Revised Annual Caseload | Revised Hours | FTE Reduction |
| Traffic and Other Minor Crimes | 7.60 | 10,696 | 81,290 | (5,134) | 5,562 | 42,271 | 19 |
| DWI | 21.70 | 5,345 | 115,986 | - | 5,345 | 115,987 | - |
| Drug Crimes, Property Crimes, Status Offenses | 32.53 | 19,347 | 629,357 | (6,238) | 13,109 | 426,436 | 98 |
| Crimes Against Person (Adult Victim) | 50.67 | 12,643 | 640,620 | (43) | 12,600 | 638,442 | - |
| Child Pornography Cases | 126.50 | 53 | 6,705 | - | 53 | 6,705 | - |
| Child Abuse / Child Sex Crimes (Not including CARD or Child Pornography Cases) | 177.36 | 1,300 | 230,568 | - | 1,300 | 230,568 | - |
| Murder (including CARD) | 391.03 | 185 | 72,340 | - | 185 | 72,341 | - |
| Probation Violations | 5.17 | 8,003 | 41,375 | (6,308) | 1,695 | 8,763 | 16 |
| Total Adult Criminal | | 57,572 | 1,818,241 | (17,723) | 39,849 | 1,541,513 | 133 |
| Total Juvenile | | 2,432 | 46,836 | - | 2,432 | 46,836 | - |
| GRAND TOTAL | | 60,004 | 1,865,077 | | 42,281 | 1,588,349 | 133 |

Hours 2,080

2,080

FTEs needed [3] 897

FTEs needed [3] 764

FTEs have [4] 295

FTEs have [4] 295

FTE deficiency 602

Revised FTE deficiency 469

Caseload reduction 30%

FTE need reduction 15%

[1] Results from The New Mexico Project Adult Criminal Panel

[2] Average statewide opened cases by type for FY2019 through Q3 FY 2021

[2] Delphi Hours Per Case x Estimated Annual Caseload

[3] Hours divided by 2,080

[4] Average FTE from The New Mexico Project

[5] Average caseload recommended to be decriminalized by type

[6] Change in hours divided by 2,080

FY24 Budget Request

| FY24 Base Budget Increase Request | | |
|---|--|---------------------|
| 20.9% \$12,032,000 | | |
| Begin to implement ABA New Mexico Workload Study recommendations toward adequate defense team staffing to improve representation, and increase direct support and social work services to clients and reduce recidivism <ul style="list-style-type: none"> ❖ 60 FTE = 30 attorneys (\$3.36 million) & 30 core staff (\$2.31 million) ❖ Essential and competitive compensation for contract attorneys (creating more pay parity with state civil contract attorneys), funding for complex case compensation, and increased base rates on cases requiring specialized knowledge or experience (\$4.16 million) ❖ Support pay equity and pay parity with district attorneys (\$1.27 million) | | \$11,112,700 |
| Maintain adequate funding for trial and operational needs <ul style="list-style-type: none"> ❖ Trial expenses – expert witness costs, compensation for contract social workers, and contract investigators ❖ Operational needs – lease escalations, transcription costs, and equipment | | \$919,300 |

| NM Law Offices of the Public Defender - Contract Rates | | |
|---|------------|---|
| Case Type | Base Rate | Hourly rates based on NM workload study Delphi panel results (2022) |
| 1st Degree Felony Murder | \$5,400.00 | \$13.81 |
| 1st Degree - Life Imprisonment | \$5,400.00 | \$13.81 |
| 1st Degree Felony | \$750.00 | \$14.80 |
| 2nd Degree Felony | \$700.00 | \$13.81 |
| 3rd Degree Felony | \$645.00 | \$12.73 |
| 4th Degree Felony | \$540.00 | \$16.60 |
| Juvenile | \$300.00 | \$0.79 - \$18.94 * |
| Misdemeanor DWI/DV | \$300.00 | \$13.82 |
| Misdemeanor (other) | \$180.00 | \$23.68 |
| <p>* The more severe the case, the more hours worked and less the attorney is paid per hour. Data from ABA/Moss Adams Report, page 3 (chart), juvenile data from page 26 of report.</p> | | |

| 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. | | |

| Other New Mexico State Contractor Comparisons | |
|---|---|
| Years of Experience | NM Risk Management Division (civil cases) |
| 1-2 years | \$95/hour |
| 2-5 years | \$125/hour |
| 5-10 years | \$145/hour |
| 10+ | \$165/hour |

| Estimated Cost of Hourly Rates for LOPD Contract Attorneys | | | |
|--|--|-------------|--------------------------------|
| Case Type | Annual Contract Attorney Hours By Case Type* | Hourly Rate | Total Cost |
| Traffic and Other Minor Crimes | 20,186 | \$ 125.00 | \$ 2,523,250.00 |
| DWI | 29,208 | \$ 125.00 | \$ 3,651,000.00 |
| Drug Crimes, Property Crimes, Status Offenses | 276,960 | \$ 125.00 | \$ 34,620,000.00 |
| Crimes Against Person (Adult Victim) | 213,979 | \$ 125.00 | \$ 26,747,375.00 |
| Child Pornography Cases | 1,645 | \$ 125.00 | \$ 205,625.00 |
| Child Abuse / Child Sex Crimes (Not including Child Abuse Resulting in Death or Child Pornography Cases) | 111,559 | \$ 125.00 | \$ 13,944,875.00 |
| Murder (including Child Abuse Resulting in Death) | 42,231 | \$ 125.00 | \$ 5,278,875.00 |
| Probation Violations | 12,806 | \$ 125.00 | \$ 1,600,750.00 |
| | <u>708,574</u> | | <u>\$ 88,571,750.00</u> |
| *Source: 2022 ABA Workload Study, page 65. | | | |

National Standards

- Benefits -does not require you do complete a full workload study
- Use findings and time per case
 - Map to your own case types
 - Determine needed hours
 - Estimate needed FTE
 - Ask for needed funding

National Standards

- Tailor message and data to your audience
 - County commissions, public grant funders, clients, public defenders, core staff.
- Anticipated release date?



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