

# New Mexico Civil Rights Commission

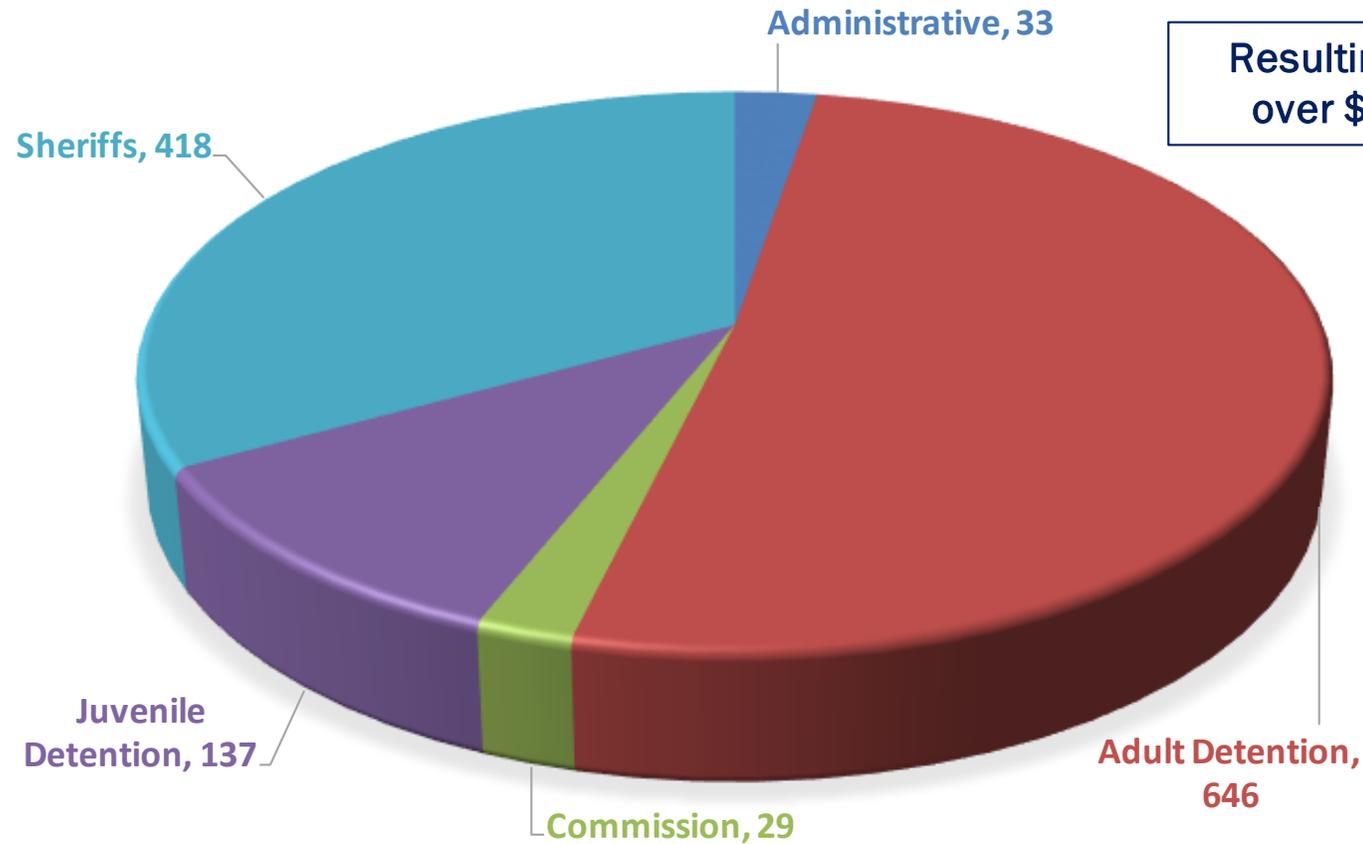
October 2, 2020



NEW MEXICO  
COUNTIES

33 STRONG

## Number of Civil Rights Claims Policy Years 2012 - 2016 By Department



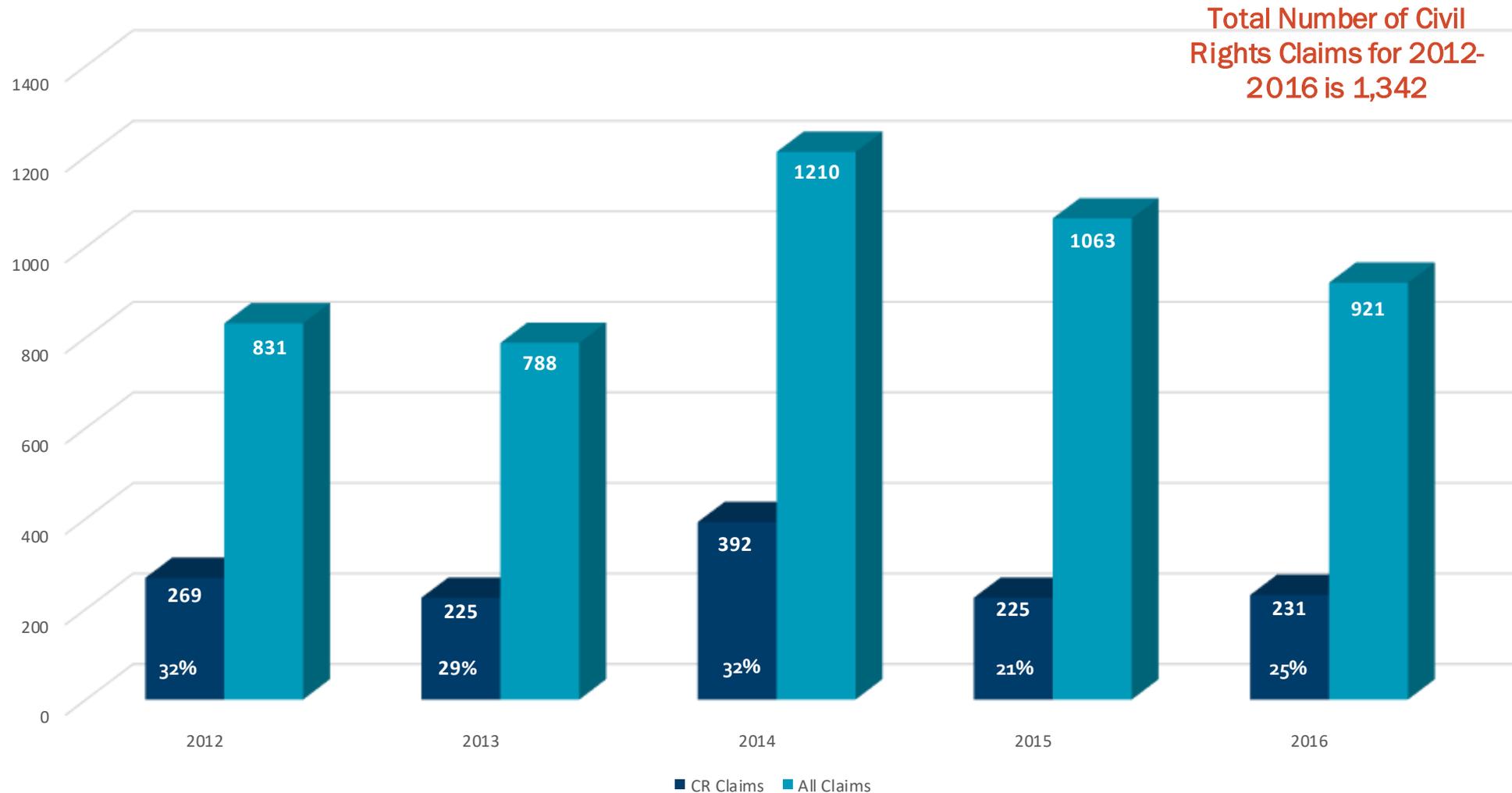
**Resulting in a Total Cost of  
over \$71 Million Dollars**

The following departments each had fewer than 10 Civil Rights Claims for 2012-2016:

- Animal Control
- Assessor
- Clerk
- Communication
- Community Services
- County Manager
- Department of Substance Abuse
- Detention
- Dispatchers
- DWI
- EMS
- Finance
- Fire Fighter
- Health Services
- Housing Authority/ Sec 8/ HUD
- Human Resources
- IT/ Data Processing
- Other Admin Departments
- Other Community Services
- Parks & Rec
- Planning and Zoning
- Public Information Officer
- Public Works
- Roads
- Solid Waste/ Transfer Station
- Transit
- Treasurer
- Utilities

Note 1> Juvenile Detention consist of 120 claims that were part of a FLSA class action

# Number of Civil Rights Claims Compared to All Other Claims Policy Years 2012-2016



Note 1> All claims includes Auto 3<sup>rd</sup> Party, Errors & Omissions, Employee Benefits Liability, Employment Practices Liability, General Liability, Injunctive Relief, Law Enforcement and Land Use claims.

## Number of Litigated Claims with Percentage of Civil Rights Claims Policy Years 2012-2016

	Type of Claim	Number Litigated Claims	Number Civil Rights Claims	% Civil Rights Claims
2012	Employment Practices Liability	92	90	98%
	Law Enforcement	120	82	68%
	All Other Claims	153	-	
	<b>Total</b>	<b>365</b>	<b>172</b>	<b>47%</b>
2013	Type of Claim	Number Litigated Claims	Number Civil Rights Claims	% Civil Rights Claims
	Employment Practices Liability	49	35	71%
	Law Enforcement	151	113	75%
	All Other Claims	134	-	
<b>Total</b>	<b>334</b>	<b>148</b>	<b>44%</b>	
2014	Type of Claim	Number Litigated Claims	Number Civil Rights Claims	% Civil Rights Claims
	Employment Practices Liability	168	160	95%
	Law Enforcement	201	125	62%
	All Other Claims	185	-	
<b>Total</b>	<b>554</b>	<b>285</b>	<b>51%</b>	
2015	Type of Claim	Number Litigated Claims	Number Civil Rights Claims	% Civil Rights Claims
	Employment Practices Liability	22	17	77%
	Law Enforcement	179	98	55%
	All Other Claims	201	-	
<b>Total</b>	<b>402</b>	<b>115</b>	<b>29%</b>	
2016	Type of Claim	Number Litigated Claims	Number Civil Rights Claims	% Civil Rights Claims
	Employment Practices Liability	33	31	94%
	Law Enforcement	118	85	71%
	All Other Claims	277	-	
<b>Total</b>	<b>378</b>	<b>116</b>	<b>31%</b>	
<b>Total 2012-2016</b>		<b>2,033</b>	<b>836</b>	<b>41%</b>

Note 1> The category, All Other Claims, include Auto 3<sup>rd</sup> Party, Employee Benefits Liability, Errors and Omissions, General Liability, Injunctive Relief, and Land Use claims.

**Civil Rights Claims  
Settlement/Judgment and Plaintiff/ Plaintiff Attorney Payments  
2012-2016**

Year	Type of Claim	Paid Settlements & Judgment	Paid to Plaintiff Attorney (Note 2)	Paid Attorney Fees (Note 3)	Total Paid to Plaintiff
2012	Employment Practices Liability	1,143,782	377,448	50,000	766,334
	Law Enforcement	3,792,000	1,251,360		2,540,640
2013	Employment Practices Liability	517,314	170,714	31,500	346,600
	Law Enforcement	3,475,201	1,146,816		2,328,385
2014	Employment Practices Liability	1,085,074	358,074		727,000
	Law Enforcement	12,162,200	4,013,526		8,148,674
2015	Employment Practices Liability	776,678	256,304	223,822	520,374
	Law Enforcement	13,737,300	4,533,309	605,728	9,203,991
2016	Employment Practices Liability	991,028	327,039	284,304	663,989
	Law Enforcement	10,486,000	3,460,380	60,000	7,025,620
	<b>Total EPL</b>	<b>4,513,876</b>	<b>1,489,579</b>	<b>589,626</b>	<b>3,024,297</b>
	<b>Total LE</b>	<b>43,652,701</b>	<b>14,405,391</b>	<b>665,728</b>	<b>29,247,310</b>
	<b>Grand Total</b>	<b>48,166,577</b>	<b>15,894,970</b>	<b>1,255,354</b>	<b>32,271,607</b>

Note 1> NMC paid one judgment in policy year 2015 in the amount of \$52,884.

Note 2> Amount paid to Plaintiff Attorney is conservatively estimated to be at 33% of the paid settlement.

Note 3> Paid Attorney fees are payments made directly to the Plaintiff Attorney.

**Outstanding Reserves**  
**Civil Rights Claims**  
**2012-2016**

Policy Year	Outstanding Amount
2012	236,966
2013	243,587
2014	187,922
2015	225,110
2016	1,158,481
<b>Total</b>	<b>\$2,052,067</b>
<b>No. of Open Claims</b>	<b>26</b>

Paid Legal and Paid Expenses  
Civil Rights Claims  
2012-2016

Policy Year	Type of Claim	Paid Legal	Paid Expenses
2012	Employment Practices Liability	1,112,209	84,813
	Law Enforcement	3,181,718	297,051
2013	Employment Practices Liability	952,214	75,788
	Law Enforcement	1,312,696	127,722
2014	Employment Practices Liability	869,102	71,182
	Law Enforcement	2,195,824	568,229
2015	Employment Practices Liability	633,481	56,456
	Law Enforcement	2,775,852	635,530
2016	Employment Practices Liability	1,626,953	203,409
	Law Enforcement	2,531,999	478,360
	<b>Total EPL</b>	<b>5,193,959</b>	<b>491,648</b>
	<b>Total LE</b>	<b>11,998,089</b>	<b>2,106,892</b>
	<b>Grand Total</b>	<b>17,192,048</b>	<b>2,598,540</b>

# Tort Claims Act Law Enforcement Waiver

- **NMSA 1978 §41-4-12 Liability; Law enforcement officers**

The immunity granted pursuant to [Subsection A of Section 41-4-4 NMSA 1978](#) does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights, the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence, failure to comply with duties established pursuant to statute or law or any other deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties. For purposes of this section, “law enforcement officer” means a public officer or employee vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of or convicted of committing a crime, whether that duty extends to all crimes or is limited to specific crimes.

# Tort Claims Act Law Enforcement Waiver

- **NMSA 1978 §41-4-12 Liability; Law enforcement officers**

The immunity granted pursuant to [Subsection A of Section 41-4-4 NMSA 1978](#) does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights, the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence, **failure to comply with duties established pursuant to statute or law or any other deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties.** For purposes of this section, “law enforcement officer” means a public officer or employee vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of or convicted of committing a crime, whether that duty extends to all crimes or is limited to specific crimes.

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# Tort Claims Act Who Pays?

- **NMSA 1978 §41-4-4**

B. [...] a governmental entity shall provide a defense, including costs and attorney fees, for any public employee when liability is sought for:

- (1) any tort alleged to have been committed by the public employee while acting within the scope of his duty; or
- (2) any violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico when alleged to have been committed by the public employee while acting within the scope of his duty.

C. A governmental entity shall pay any award for punitive or exemplary damages awarded against a public employee...if the public employee was acting within the scope of his duty.

D. A governmental entity shall pay any settlement or any final judgment entered against a public employee for:

- (1) any tort that was committed by the public employee while acting within the scope of his duty; or
- (2) a violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico that occurred while the public employee was acting within the scope of his duty.

Broker  
Perspective

John Chino  
Senior Vice President  
Gallagher

**Total Incurred by Claim  
Individual Civil Rights Claims  
Large Losses Greater Than \$1.5M Since Inception**

Policy Year	Coverage	Claim Type	Department	Total Cost
2007	LE	Inadequate Mental Health Treatment	Adult Detention	15,500,000
2019	LE	Use of Force	Adult Detention	5,090,000*
2016	LE	Inadequate Mental Health Treatment	Adult Detention	5,033,977
2019	LE	Use of Force	Sheriffs	4,026,274
2014	LE	Inadequate Mental Health Treatment	Adult Detention	3,018,829
2015	LE	Inadequate Mental Health Treatment	Adult Detention	2,388,580
2014	LE	Inadequate Mental Health Treatment	Adult Detention	2,172,516
2014	LE	Inadequate Mental Health Treatment	Adult Detention	2,078,713
2015	LE	Inadequate Mental Health Treatment	Juvenile Detention	1,934,616
2011	EPL	Title VII	Sheriffs	1,845,668
2012	LE	Inadequate Mental Health Treatment	Adult Detention	1,672,226
2015	LE	Use of Force	Sheriffs	1,647,830

\* Claim is open

Note 1> Total number of civil rights claims since the inception of the pool is 2,277, resulting in a total cost of \$124,640,974