

LOPD INTEROFFICE MEMORANDUM

DATE: February 25, 2021
TO: LOPD Employees
FROM: Bennett J. Baur, Chief Public Defender
RE: Updated Poverty Guidelines, contract reimbursement policy, and guidance for eligibility

LOPD's case management system (defenderData) will be updated with the current Federal Poverty Guidelines effective on **Monday, March 1, 2021**. Defendants applying for a public defender attorney will be qualified if they are at or below 200% of the federal poverty guidelines.

2021 Federal Poverty Guidelines Calculation Chart								
	Single	Family of 2	Family of 3	Family of 4	Family of 5	Family of 6	Family of 7	Family of 8
Federal Poverty Guideline	\$12,880.00	\$17,420.00	\$21,960.00	\$26,500.00	\$31,040.00	\$35,580.00	\$40,120.00	\$44,660.00
< 200% = Indigent	\$25,760.00	\$34,840.00	\$43,920.00	\$53,000.00	\$62,080.00	\$71,160.00	\$80,240.00	\$89,320.00
<i>Each Additional Dependent Add \$4,540.00</i>								

REMINDER: LOPD DOES NOT SIGN REIMBURSEMENT CONTRACTS FOR DEFENDANTS THAT DO NOT QUALIFY

As a reminder, as of April 1, 2018, LOPD no longer offers reimbursement contracts to defendants who do not qualify for a public defender. A defendant who does not qualify should hire a private attorney. Any defendants provided a Conditional Order of Appointment by a judge **MUST** complete an application with the LOPD to determine whether they qualify for our representation. Defendants must visit an LOPD office to complete an application, or contact an office for instructions on how to apply if it is a hardship to apply in person.

If there is a Conditional Order of Appointment and the client does meet our Eligibility Guidelines and qualifies for our representation, then the client will be deemed qualified for LOPD services and provided documentation confirming qualification. The case will be opened and assigned to a Public Defender Attorney or a Contract Attorney.

If the defendant does not meet our Eligibility Guidelines, then the defendant does not qualify and documentation will be given to the defendant to take back to court verifying that the defendant does not qualify and stating that LOPD is unable to represent the defendant. A file will not be opened, it will not be assigned to an attorney, and the office will file a "Notice of Non-Indigence and Motion to Withdraw." The appropriate information must be entered into the case management system and additionally, case notes must be entered stating that the client did not meet the LOPD Eligibility Guidelines. Clients will be advised to seek representation from a private attorney or seek

assistance from www.nmbar.org. Attorneys must file a “Notice of Non-Indigence and Motion to Clarify Appointment of Counsel” notifying the court that the defendant’s economic situation does not qualify them for representation at public expense.

CASE INFORMATION AND DATA ENTRIES INTO DEFENDERDATA

In order to accurately track and report data on caseloads, ensure caseloads are fair and consistent, and comply with the LOPD Performance Standards, the following are required procedures. Accurate reporting of data is not only critical to the Department, but also creates additional accountability for prosecutors and the courts. Please complete the following:

1. Felony Cases
 - a. Staff must enter the degree of the felony. This includes all felony charges.
 - b. Data entry is also required for all murder cases, including those contracted out. Please double check “top charge” entries to confirm that the charge with the most serious penalty is the “first charge” and the corresponding degree for the charge in the “CA” field.

2. Missing and incorrect entries affect accurate counting of attorney case assignments.
 - a. Data entry on case types and case subtypes – including accurate entry or missing data on whether a case is a felony, juvenile, or misdemeanor case and the case subtype affects the accurate representation and reporting of individual attorney caseloads. Staff should work to ensure that the field is not blank and that the data entered is accurate.
 - b. In addition, the accuracy of entries on county, district, and case assignment office affect caseload reporting.

Case Information	
County:	Otero
District:	TWELFTH JUDICIAL D
Case Assign Office:	ALAMOGORDO
Case Type:	Felony
Case Sub Type:	Crimes Against Pers

ELIGIBILITY SCREENING AND COLLECTION

Eligibility Screening

1. During the screening process, staff shall attempt to verify income information reported by the applicant by reviewing documentation (public assistance, employment, etc.). If the applicant does not have the documentation, staff shall determine whether requiring applicant to obtain that information would create an undue burden and obtain approval from office manager, managing attorney, or district defender to process the application without the supporting documentation.

2. COVID-19: Please also continue to follow screening as is laid out in the LOPD Restoring Client Services and Reopening Plan 2.1, pg. 7, #13, which states the following:

Eligibility Screening:

- a. Please err on the side of qualifying applicants during this time. If an applicant does not have required documentation, please obtain the applicant's name, case number, and contact information (address, phone, and email address) and deem them qualified in defenderData. Please add a note in defenderData stating "qualification due to coronavirus." Notify them they will need to provide documentation and the application fee at a later time. If you have questions about a specific eligibility issue, please contact your district defender or office manager.
 - b. Eligibility qualification may be conducted by phone or by email and documentation may be provided by email or fax.
 - c. Employees handling items used by clients or visitors must properly wash their hands, use hand sanitizer or change gloves **before** working with another client or visitor (e.g. pens, paperwork, files, cash, etc.).
 - d. *Please review and follow direction provided in updated Restoring Client Services and Reopening plans.*
3. Attached is the updated Client Fee Schedule that includes the chart with the 2021 Federal Poverty Guidelines.
- a. Each office must post this fee schedule with the updated information.
 - b. Notice will also be posted on the LOPD website.
4. Please note that if the application fee is waived, the screener must document in defenderData by providing the reason and name of the person approving the fee to be waived. For example, if the fee was waived by the court due to homelessness. The note should also describe the documentation that helped in making that determination.
5. Note if there is a court appointment, then include the date of the appointment.
6. **IF A DEFENDANT DOES NOT QUALIFY – staff will encourage the defendant to hire a private attorney.** *If the defendant requests a waiver, then the staff member must collect and forward all necessary information and documentation to the district defender to submit to the Chief or his designee for consideration. IF the Chief or his designee grants the request, then staff must note the date of the waiver and the name of individual who approved the waiver.*
7. **District offices will maintain a list of any cases where the defendant does not qualify, but a waiver is requested and if it is approved.** Any list of names must

be provided monthly to Jaime Flores (Jaime.Flores@lopdm.us) and Cydni Sanchez (Cydni.Sanchez@lopdm.us).

Collection of \$10 Fee

1. Efforts should be made to collect the \$10 and also collect on any past or pending cases where the \$10 was not paid.
2. Employees handling items used by clients or visitors must properly wash their hands, use hand sanitizer or change gloves **before** working with another client or visitor (e.g. pens, paperwork, files, cash, etc.).
3. If applicant does not have the \$10, staff should obtain information to determine whether payment of the \$10 fee would create a financial hardship and obtain approval from the office manager, managing attorney, or district defender. Approval of the fee waiver must be noted in defenderData, including the date and name of the supervisor that approved.
4. Defendants will **not be denied an attorney** if they are unable to pay.
5. Reminder – this fee is non-refundable.

6. FEE STATUS REPORT- MUST be completed daily. This report reconciles the money collected with the application completed.
 - a. *Each office manager should have a procedure in which the end of the day report is completed, how the documentation is kept, and the process for the daily deposits.*
 - b. *There should be a procedure in place for a backup staff member to run the report in the Office Manager or designated staff member's absence.*
 - c. *There should be consistency in the procedure for tracking the monies collected and the documentation that is associated with each days reporting and the associated bank deposit.*
 - d. *Copies of daily reports should be stored for monthly reconciliation by Fiscal, for both end of the day reports and contracts.*

Additional attachments or resources:

- 1) **Chief's Policy Regarding Departmental Representation of Non-Indigent Defendants by Contract**
- 2) **Updated qualification notice to be posted in each office.**