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HOUSE BILL 409

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Al Park

FOR THE COURTS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

**RELATING TO THE PUBLIC DEFENDER DEPARTMENT; PROVIDING THE
CHIEF PUBLIC DEFENDER WITH AUTHORITY TO CERTIFY CERTAIN
CONTRACTS AND EXPENDITURES FOR LITIGATION EXPENSES;
AUTHORIZING REPRESENTATION OF A PERSON WHO IS UNDER
INVESTIGATION FOR ALLEGEDLY COMMITTING MURDER OR ANY OTHER
FELONY CRIMINAL OFFENSE; AMENDING SECTIONS OF THE PUBLIC
DEFENDER ACT.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 31-15-7 NMSA 1978 (being Laws 1973,
Chapter 156, Section 7, as amended) is amended to read:**

**"31-15-7. CHIEF PUBLIC DEFENDER--GENERAL DUTIES AND
POWERS. --**

**A. The chief is responsible to the governor for
the operation of the department. It is his duty to manage all**

1 operations of the department and to:

2 (1) administer and carry out the provisions
3 of the Public Defender Act with which he is charged; and

4 (2) exercise authority over and provide
5 general supervision of employees of the department.

6 B. To perform his duties, the chief has every
7 power implied as necessary for that purpose, those powers
8 expressly enumerated in the Public Defender Act or other laws
9 and full power and authority to:

10 (1) exercise general supervisory authority
11 over all employees of the department subject to the Personnel
12 Act;

13 (2) delegate authority to subordinates as he
14 deems necessary and appropriate;

15 (3) within the limitations of applicable
16 appropriations and applicable laws, employ and fix the
17 compensation of those persons necessary to discharge his
18 duties;

19 (4) organize the department into those units
20 he deems necessary and appropriate to carry out his duties;

21 (5) conduct research and studies that will
22 improve the operation of the department and the administration
23 of the Public Defender Act;

24 (6) provide courses of instruction and
25 practical training for employees of the department that will

underscored material = new
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1 improve the operation of the department and the administration
2 of the Public Defender Act;

3 (7) purchase or lease personal property and
4 lease real property for the use of the department;

5 (8) maintain records and statistical data
6 [which] that reflect the operation and administration of the
7 department;

8 (9) submit an annual report covering the
9 operation of the department together with appropriate
10 recommendations to the governor, secretary of corrections and
11 legislature;

12 (10) serve as defense counsel under the
13 Public Defender Act as necessary and appropriate;

14 (11) formulate a fee schedule for attorneys
15 who are not employees of the department who serve as counsel
16 for indigent persons under the Public Defender Act;

17 (12) adopt a standard to determine indigency;

18 (13) provide for the collection of
19 reimbursement from each person who has received legal
20 representation or another benefit under the Public Defender
21 Act after a determination is made that he was not indigent
22 according to the standard for indigency adopted by the
23 department. Any amounts recovered shall be paid to the state
24 treasurer for credit to the general fund; [~~and~~]

25 (14) require each person who desires legal

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1 representation or another benefit under the Public Defender
2 Act to enter into a contract with the department agreeing to
3 reimburse the department if a determination is made that he
4 was not indigent according to the standard for indigency
5 adopted by the department; and

6 (15) certify contracts and expenditures for
7 litigation expenses, including contracts and expenditures for
8 professional and nonprofessional experts, investigators and
9 witness fees, but not including attorney contracts, pursuant
10 to the provisions of the Procurement Code, Section 13-1-98
11 NMSA 1978. "

12 Section 2. Section 31-15-10 NMSA 1978 (being Laws 1973,
13 Chapter 156, Section 10) is amended to read:

14 "31-15-10. DUTIES OF DISTRICT PUBLIC DEFENDER. --

15 A. Under the supervision and control of the chief,
16 each district public defender shall administer the operation
17 of the department office within his district.

18 B. The district public defender or the chief may
19 authorize the representation of a person who is without
20 counsel and who is financially unable to obtain counsel when
21 that person is under investigation for allegedly committing
22 murder or any other felony criminal offense.

23 [~~B.~~] C. The district public defender shall
24 represent every person without counsel who is financially
25 unable to obtain counsel and who is charged in any court

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1 within the district with any crime that carries a possible
2 sentence of imprisonment. The representation shall begin not
3 later than the time of the initial appearance of the person
4 before any court and shall continue throughout all stages of
5 the proceedings against him, including any appeal, as directed
6 by the chief.

7 ~~[C-]~~ D. The district public defender shall
8 represent any person within the district who is without
9 counsel and who is financially unable to obtain counsel in any
10 state postconviction proceeding.

11 ~~[D-]~~ E. The district public defender shall notify
12 the chief if, for any reason, he is unable to represent a
13 person entitled to his representation, and the chief shall
14 make provision for representation.

15 ~~[E-]~~ F. The district public defender may confer
16 with any person who is not represented by counsel and who is
17 being forcibly detained. "

18 Section 3. EFFECTIVE DATE. -- The effective date of the
19 provisions of this act is July 1, 2001.