

1 HOUSE BILL 348

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Al Park

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8 FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

9
10 AN ACT

11 RELATING TO THE PUBLIC DEFENDER; CREATING THE PUBLIC DEFENDER
12 COMMISSION TO OVERSEE THE OPERATION OF THE PUBLIC DEFENDER
13 DEPARTMENT AS AN ADJUNCT AGENCY AND TO DEVELOP STANDARDS;
14 MODIFYING THE APPOINTMENT, QUALIFICATIONS AND REMOVAL OF THE
15 CHIEF PUBLIC DEFENDER; DETACHING THE PUBLIC DEFENDER DEPARTMENT
16 FROM THE CORRECTIONS DEPARTMENT.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

21 "31-15-1. SHORT TITLE.--~~[This act]~~ Chapter 31, Article 15
22 NMSA 1978 may be cited as the "Public Defender Act"."

23 Section 2. Section 31-15-2 NMSA 1978 (being Laws 1973,
24 Chapter 156, Section 2, as amended) is amended to read:

25 "31-15-2. DEFINITIONS.--As used in the Public Defender

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1 Act:

2 A. "chief" means the chief public defender;

3 B. "commission" means the public defender
4 commission;

5 ~~[A.]~~ C. "court" means the district, [courts]
6 metropolitan and magistrate courts of this state;

7 ~~[B.]~~ D. "department" means the public defender
8 department;

9 ~~[C.]~~ E. "district" means [the] a public defender
10 district; and

11 ~~[D.]~~ F. "judge" means a judge of the district or
12 metropolitan court or a magistrate [and

13 E. "chief" means the chief public defender]."

14 Section 3. A new section of the Public Defender Act is
15 enacted to read:

16 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--CREATED--
17 MEMBERSHIP--TERMS--REMOVAL.--

18 A. The "public defender commission" is created and
19 consists of eleven members. Each of the following shall
20 appoint one member:

21 (1) the governor;

22 (2) the chief justice of the New Mexico
23 supreme court;

24 (3) the speaker of the house;

25 (4) the president pro tempore of the senate;

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1 (5) the dean of the university of New Mexico
2 school of law;

3 (6) the New Mexico women's bar association;

4 (7) the New Mexico criminal defense lawyers
5 association;

6 (8) the juvenile justice advisory committee;

7 (9) the New Mexico Hispanic bar association;

8 (10) the New Mexico Indian bar association;

9 and

10 (11) the New Mexico black lawyers association.

11 B. Initial appointments to the commission shall be
12 made by September 1, 2007. Initial terms of members appointed
13 by the dean of the university of New Mexico school of law, the
14 New Mexico women's bar association, the New Mexico criminal
15 defense lawyers association and the juvenile justice advisory
16 committee shall be for four years; initial terms of members
17 appointed by the New Mexico Hispanic bar association, the New
18 Mexico Indian bar association and the New Mexico black lawyers
19 association shall be for three years; and initial terms of
20 members appointed by the governor, chief justice of the New
21 Mexico supreme court, speaker of the house and president pro
22 tempore of the senate shall be for two years.

23 C. Subsequent terms shall be for four years. A
24 commission member shall not serve more than two consecutive
25 terms. A commission member shall serve until the member's

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1 successor has been appointed and qualified. A vacancy on the
2 commission shall be filled by the appointing authority for the
3 remainder of the unexpired term.

4 D. A member may be removed by the commission for
5 malfeasance, misfeasance or neglect of duty. If a member's
6 professional status changes to render the member ineligible
7 pursuant to Section 4 of this 2007 act, the member shall resign
8 immediately.

9 E. Members of the commission are entitled to
10 compensation pursuant to the provisions of the Per Diem and
11 Mileage Act and shall receive no other perquisite, compensation
12 or allowance.

13 F. The commission is administratively attached to
14 the department, and staff for the commission shall be provided
15 by the department."

16 Section 4. A new section of the Public Defender Act is
17 enacted to read:

18 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--MEMBER
19 QUALIFICATIONS.--

20 A. A person appointed to the commission shall:
21 (1) have significant experience in the defense
22 of criminal or juvenile justice cases; or
23 (2) demonstrate a commitment to quality
24 indigent defense representation or to working with and
25 advocating for the population served by the department.

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1 B. The following persons shall not be appointed to
2 and shall not serve on the commission:

3 (1) prosecutors, law enforcement officials or
4 employees of prosecutors or law enforcement officials;

5 (2) public defenders or other employees of the
6 department;

7 (3) judges, judicial officials or employees of
8 judges or judicial officials;

9 (4) elected officials or employees of elected
10 officials; or

11 (5) persons who contract with or receive
12 funding from the department or employees of such persons."

13 Section 5. A new section of the Public Defender Act is
14 enacted to read:

15 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--ORGANIZATION--
16 MEETINGS.--

17 A. The commission shall hold its first meeting by
18 October 1, 2007 and shall organize and elect a chair at that
19 meeting. Thereafter, three or more meetings shall be held
20 annually as determined by a majority of commission members.
21 Meetings shall be held at the call of the chair or the chief or
22 at the request of four commission members.

23 B. A majority of commission members constitutes a
24 quorum for the transaction of business, and an action by the
25 commission is not valid unless six or more members concur.

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1 C. The commission may adopt rules and shall keep a
2 record of its proceedings.

3 D. A commission member may select a designee to
4 serve in the member's stead only once per year."

5 Section 6. A new section of the Public Defender Act is
6 enacted to read:

7 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--POWERS AND
8 DUTIES.--

9 A. The commission shall exercise independent
10 oversight of the department and provide guidance to the chief
11 in the administration of the department and the representation
12 of indigent persons pursuant to the Public Defender Act.

13 B. The commission shall develop fair and consistent
14 standards for the operation of the department and the provision
15 of services pursuant to the Public Defender Act, including
16 standards relating to:

17 (1) the minimum experience, training and
18 qualifications for appointed, contract and staff attorneys in
19 both adult and juvenile cases;

20 (2) monitoring and evaluating appointed,
21 contract and staff attorneys;

22 (3) ethically responsible caseload and
23 workload levels and workload monitoring protocols for staff
24 attorneys, contract attorneys and district defender offices;

25 (4) the competent and efficient representation

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1 of clients whose cases present conflicts of interest; and

2 (5) qualifications and performance in capital
3 cases at the trial, appellate and post-conviction levels."

4 Section 7. Section 31-15-4 NMSA 1978 (being Laws 1973,
5 Chapter 156, Section 4, as amended) is amended to read:

6 "31-15-4. CHIEF PUBLIC DEFENDER--APPOINTMENT--
7 QUALIFICATIONS--REMOVAL.--

8 A. The [~~governor shall appoint the~~] chief [~~who~~]
9 shall be the administrative head of the department. [~~Any~~] The
10 commission shall appoint a chief for a term of four years by
11 approval of two-thirds of its members. The commission may
12 reappoint a chief for subsequent terms. A vacancy in the
13 office of the chief shall be filled by appointment [of] by the
14 [~~governor~~] commission.

15 B. The [~~governor~~] commission shall appoint as chief
16 only a person with the following qualifications:

17 (1) an attorney licensed to practice law in
18 the highest court of this state or who will be so licensed
19 within one year of appointment;

20 (2) an attorney whose practice of law has been
21 continuously active for at least [~~five~~] ten years immediately
22 preceding the date of this appointment; and

23 (3) an attorney whose practice of law has
24 clearly demonstrated experience in defense [~~or prosecution~~] of
25 persons accused of crime [~~in this state~~].

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1 C. The chief [~~shall serve at the pleasure of the~~
2 ~~governor~~] may be removed by the commission only for
3 incompetence, neglect of duty or malfeasance in office;
4 provided, however, that no removal shall be made without notice
5 of hearing and an opportunity to be heard having been first
6 given to the chief."

7 Section 8. Section 31-15-5 NMSA 1978 (being Laws 1978,
8 Chapter 14, Section 1) is amended to read:

9 "31-15-5. PUBLIC DEFENDER DEPARTMENT--CREATION--
10 ADMINISTRATION--FINANCE.--

11 A. [~~There is created~~] The "public defender
12 department" is created as an adjunct agency of the executive
13 branch. The headquarters of the department shall be maintained
14 at Santa Fe. The chief shall be the administrative head of the
15 department. [~~The department is administratively attached to~~
16 ~~the criminal justice department.~~] The commission shall oversee
17 the department and provide guidance to the chief.

18 B. All salaries and other expenses of the
19 department shall be paid by warrants of the secretary of
20 finance and administration, supported by vouchers signed by the
21 chief or [~~his~~] the chief's authorized representative and in
22 accordance with budgets approved by the state budget division
23 of the department of finance and administration."

24 Section 9. Section 31-15-7 NMSA 1978 (being Laws 1973,
25 Chapter 156, Section 7, as amended) is amended to read:

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1 "31-15-7. CHIEF PUBLIC DEFENDER--GENERAL DUTIES AND
2 POWERS.--

3 A. The chief is responsible to the [~~governor~~]
4 commission for the operation of the department. It is [~~his~~]
5 the chief's duty to manage all operations of the department and
6 to:

7 (1) administer and carry out the provisions of
8 the Public Defender Act with which [~~he~~] the chief is charged;
9 and

10 (2) exercise authority over and provide
11 general supervision of employees of the department.

12 B. To perform [~~his~~] the chief's duties, the chief
13 has every power implied as necessary for that purpose, those
14 powers expressly enumerated in the Public Defender Act or other
15 laws and full power and authority to:

16 (1) exercise general supervisory authority
17 over all employees of the department subject to the Personnel
18 Act;

19 (2) delegate authority to subordinates as [~~he~~]
20 the chief deems necessary and appropriate;

21 (3) within the limitations of applicable
22 appropriations and applicable laws, employ and fix the
23 compensation of those persons necessary to discharge [~~his~~] the
24 chief's duties;

25 (4) organize the department into those units

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1 [he] the chief deems necessary and appropriate to carry out
2 [~~his~~] the chief's duties;

3 (5) conduct research and studies that will
4 improve the operation of the department and the administration
5 of the Public Defender Act;

6 (6) provide courses of instruction and
7 practical training for employees of the department that will
8 improve the operation of the department and the administration
9 of the Public Defender Act;

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

12 (8) maintain records and statistical data that
13 reflect the operation and administration of the department;

14 (9) submit an annual report covering the
15 operation of the department together with appropriate
16 recommendations to the [~~governor, secretary of corrections~~]
17 commission and, upon approval by the commission, to the
18 legislature and the governor;

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

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

24 (12) adopt a standard to determine indigency;

25 (13) provide for the collection of

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1 reimbursement from each person who has received legal
2 representation or another benefit under the Public Defender Act
3 after a determination is made that ~~he~~ the person was not
4 indigent according to the standard for indigency adopted by the
5 department. Any amounts recovered shall be paid to the state
6 treasurer for credit to the general fund;

7 (14) require each person who desires legal
8 representation or another benefit under the Public Defender Act
9 to enter into a contract with the department agreeing to
10 reimburse the department if a determination is made that ~~he~~
11 the person was not indigent according to the standard for
12 indigency adopted by the department; and

13 (15) certify contracts and expenditures for
14 litigation expenses, including contracts and expenditures for
15 professional and nonprofessional experts, investigators and
16 witness fees, but not including attorney contracts, pursuant to
17 the provisions of the Procurement Code [~~Section 13-1-98 NMSA~~
18 ~~1978~~]."

19 Section 10. Section 9-3-1 NMSA 1978 (being Laws 1977,
20 Chapter 257, Section 1, as amended) is amended to read:

21 "9-3-1. SHORT TITLE.--~~[Sections 9-3-1 through 9-3-12]~~
22 Chapter 9, Article 3 NMSA 1978 may be cited as the "Corrections
23 Department Act"."

24 Section 11. Section 9-3-11 NMSA 1978 (being Laws 1977,
25 Chapter 257, Section 12) is amended to read:

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"9-3-11. ADMINISTRATIVE ATTACHMENT.--

A. The following entities are administratively attached to the corrections department:

- (1) the adult parole board; and
- (2) the governor's organized crime prevention commission [~~and~~
- (3) ~~the public defender department~~].

B. All powers and duties vested in the entities enumerated in this section shall remain unamended by the provisions of the [~~Criminal Justice~~] Corrections Department Act."

Section 12. TEMPORARY PROVISION.--The chief public defender serving on June 30, 2007 shall continue serving until a chief public defender is appointed by the public defender commission, but shall not serve after January 1, 2008.

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007.