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HOUSE BILL 483

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO THE PUBLIC DEFENDER; CREATING THE PUBLIC DEFENDER
COMMISSION TO OVERSEE THE OPERATION OF THE PUBLIC DEFENDER
DEPARTMENT AS AN INDEPENDENT STATE AGENCY AND TO DEVELOP
STANDARDS; MODIFYING THE APPOINTMENT, QUALIFICATIONS AND
REMOVAL OF THE CHIEF PUBLIC DEFENDER; DETACHING THE PUBLIC
DEFENDER DEPARTMENT FROM THE CORRECTIONS DEPARTMENT; DECLARING
AN EMERGENCY.

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

SECTION 1. Section 9-3-11 NMSA 1978 (being Laws 1977,
Chapter 257, Section 12) is amended to read:

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

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

(1) the adult parole board; and

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1 (2) the governor's organized crime prevention
2 commission [~~and~~

3 ~~(3) the public defender department]~~.

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

8 SECTION 2. Section 10-9-4 NMSA 1978 (being Laws 1961,
9 Chapter 240, Section 4, as amended) is amended to read:

10 "10-9-4. COVERAGE OF SERVICE.--The Personnel Act and the
11 service cover all state positions except:

12 A. officials elected by popular vote or appointed
13 to fill vacancies to elective offices;

14 B. members of boards and commissions and heads of
15 agencies appointed by the governor;

16 C. heads of agencies appointed by boards or
17 commissions;

18 D. directors of department divisions;

19 E. those in educational institutions and in public
20 schools;

21 F. those employed by state institutions and by
22 state agencies providing educational programs and who are
23 required to hold valid certificates as certified school
24 instructors as defined in Section 22-1-2 NMSA 1978 issued by
25 the [~~state board of~~] public education department;

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- 1 G. those in the governor's office;
- 2 H. those in the state militia or the commissioned
3 officers of the New Mexico state police division of the
4 department of public safety;
- 5 I. those in the judicial branch of government;
- 6 J. positions in the public defender department as
7 determined by the public defender commission;
- 8 [~~J.~~] K. those in the legislative branch of
9 government;
- 10 [~~K.~~] L. not more than two assistants and one
11 secretary in the office of each official listed in Subsections
12 A, B and C of this section, excluding members of boards and
13 commissions in Subsection B of this section;
- 14 [~~L.~~] M. those of a professional or scientific
15 nature [~~which~~] that are temporary in nature;
- 16 [~~M.~~] N. those filled by patients or inmates in
17 charitable, penal or correctional institutions;
- 18 [~~N.~~] O. state employees if the personnel board in
19 its discretion decides that the position is one of
20 policymaking; and
- 21 [~~O.~~] P. disadvantaged youth under twenty-two years
22 of age regularly enrolled or to be enrolled in a secondary
23 educational institution approved by the [~~state board of~~] public
24 education department or in an accredited state institution of
25 advanced learning or vocational training and who are to be

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1 employed for not more than seven hundred twenty hours during
2 any calendar year:

3 (1) the term "disadvantaged youth" shall be
4 defined for purposes of this exemption by regulation duly
5 promulgated by the board; and

6 (2) the board shall:

7 (a) require that all the criteria of
8 this subsection have been met;

9 (b) establish employment lists for the
10 certification of the highest-standing candidates to the
11 prospective employers; and

12 (c) establish the pay rates for such
13 employees."

14 SECTION 3. Section 31-15-1 NMSA 1978 (being Laws 1973,
15 Chapter 156, Section 1) is amended to read:

16 "31-15-1. SHORT TITLE.--~~[This act]~~ Chapter 31, Article 15
17 NMSA 1978 may be cited as the "Public Defender Act"."

18 SECTION 4. Section 31-15-2 NMSA 1978 (being Laws 1973,
19 Chapter 156, Section 2, as amended) is amended to read:

20 "31-15-2. DEFINITIONS.--As used in the Public Defender
21 Act:

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

23 B. "commission" means the public defender
24 commission;

25 ~~[A.]~~ C. "court" means the district, ~~[courts]~~

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1 metropolitan and magistrate courts of this state;

2 ~~[B.]~~ D. "department" means the public defender
3 department;

4 ~~[G.]~~ E. "district" means ~~[the]~~ a public defender
5 district; and

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

8 ~~E. "chief" means the chief public defender]."~~

9 SECTION 5. A new section of the Public Defender Act is
10 enacted to read:

11 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--MEMBERSHIP--
12 TERMS--REMOVAL.--

13 A. The public defender commission, created pursuant
14 to Article 6, Section 39 of the constitution of New Mexico,
15 consists of eleven members. Members shall be appointed as
16 follows:

17 (1) the governor shall appoint one member;

18 (2) the chief justice of the supreme court
19 shall appoint three members;

20 (3) the dean of the university of New Mexico
21 school of law shall appoint three members;

22 (4) the speaker of the house of
23 representatives shall appoint two members; and

24 (5) the majority floor leader of the senate
25 shall appoint two members.

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1 B. Initial appointments to the commission shall be
2 made by May 1, 2013. If a position remains vacant on May 1,
3 2013, the supreme court shall fill the vacancy. Initial terms
4 of members appointed by the dean of the university of New
5 Mexico school of law, the speaker of the house of
6 representatives and the majority floor leader of the senate
7 shall be for three years; and initial terms of members
8 appointed by the governor and the chief justice of the supreme
9 court shall be for two years.

10 C. Subsequent terms shall be for four years. A
11 commission member shall not serve more than two consecutive
12 terms. A commission member shall serve until the member's
13 successor has been appointed and qualified. A vacancy on the
14 commission shall be filled by the appointing authority for the
15 remainder of the unexpired term.

16 D. A member may be removed by the commission for
17 malfeasance, misfeasance or neglect of duty. If a member's
18 professional status changes to render the member ineligible
19 pursuant to the Public Defender Act, the member shall resign
20 immediately.

21 E. Members of the commission are entitled to
22 compensation pursuant to the provisions of the Per Diem and
23 Mileage Act and shall receive no other perquisite, compensation
24 or allowance.

25 F. The commission is administratively attached to

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1 the department, and staff for the commission shall be provided
2 by the department."

3 SECTION 6. A new section of the Public Defender Act is
4 enacted to read:

5 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--MEMBER
6 QUALIFICATIONS.--

7 A. A person appointed to the commission shall have:

8 (1) significant experience in the legal
9 defense of criminal or juvenile justice cases; or

10 (2) demonstrated a commitment to quality
11 indigent defense representation or to working with and
12 advocating for the population served by the department.

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

15 (1) current prosecutors, law enforcement
16 officials or employees of prosecutors or law enforcement
17 officials;

18 (2) current public defenders or other
19 employees of the department;

20 (3) current judges, judicial officials or
21 employees of judges or judicial officials;

22 (4) current elected officials or employees of
23 elected officials; or

24 (5) persons who currently contract with or
25 receive funding from the department or employees of such

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1 persons."

2 SECTION 7. A new section of the Public Defender Act is
3 enacted to read:

4 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--ORGANIZATION--
5 MEETINGS.--

6 A. The commission shall hold its first meeting by
7 June 1, 2013 and shall organize and elect a chair at that
8 meeting. Three subsequent meetings shall be held in 2013.
9 Thereafter, the commission shall meet at least four times a
10 year, as determined by a majority of commission members.
11 Meetings shall be held at the call of the chair or the chief or
12 at the request of four commission members.

13 B. The commission shall appoint the chief by
14 October 15, 2013.

15 C. A majority of commission members constitutes a
16 quorum for the transaction of business, and an action by the
17 commission is not valid unless six or more members concur.

18 D. The commission may adopt rules and shall keep a
19 record of its proceedings.

20 E. A commission member may select a designee to
21 serve in the member's stead only once per year."

22 SECTION 8. A new section of the Public Defender Act is
23 enacted to read:

24 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--POWERS AND
25 DUTIES.--

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1 A. The commission shall exercise independent
2 oversight of the department, set representation standards for
3 the department and provide guidance and support to the chief in
4 the administration of the department and the representation of
5 indigent persons pursuant to the Public Defender Act.

6 B. The commission shall develop fair and consistent
7 standards for the operation of the department and the provision
8 of services pursuant to the Public Defender Act, including
9 standards relating to:

10 (1) the minimum experience, training and
11 qualifications for appointed, contract and staff attorneys in
12 both adult and juvenile cases;

13 (2) monitoring and evaluating appointed,
14 contract and staff attorneys;

15 (3) ethically responsible caseload and
16 workload levels and workload monitoring protocols for staff
17 attorneys, contract attorneys and district defender offices;

18 (4) the competent and efficient representation
19 of clients whose cases present conflicts of interest;

20 (5) qualifications and performance of
21 appointed, contract and staff attorneys in capital cases at the
22 trial, appellate and post-conviction levels; and

23 (6) personnel policies and procedures,
24 including the development of a public defenders personnel act
25 to establish an independent system of personnel administration

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1 for the department."

2 SECTION 9. Section 31-15-4 NMSA 1978 (being Laws 1973,
3 Chapter 156, Section 4, as amended) is amended to read:

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

6 A. The [~~governor shall appoint the~~] chief [who]
7 shall be the administrative head of the department. [~~Any~~] A
8 vacancy in the office of the chief shall be filled by
9 appointment [~~of~~] by the [~~governor~~] commission.

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

12 (1) an attorney licensed to practice law in
13 [~~the highest court of this state~~] New Mexico or who will be so
14 licensed within one year of appointment;

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

18 (3) an attorney whose practice of law has
19 [~~clearly demonstrated~~] included a minimum of five years'
20 experience in defense [or prosecution] of persons accused of
21 crime [in this state]; and

22 (4) an attorney who has clearly demonstrated
23 management or executive experience.

24 C. The chief [~~shall serve at the pleasure of the~~
25 ~~governor~~] may be removed by the commission; provided, however,

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1 that no removal shall be made without notice of hearing and an
2 opportunity to be heard having been first given to the chief."

3 SECTION 10. Section 31-15-5 NMSA 1978 (being Laws 1978,
4 Chapter 14, Section 1) is amended to read:

5 "31-15-5. PUBLIC DEFENDER DEPARTMENT--[CREATION]
6 ADMINISTRATION--FINANCE.--

7 A. [~~There is created the "public defender~~
8 ~~department".~~] The headquarters of the department shall be
9 maintained at Santa Fe. [~~The chief shall be the administrative~~
10 ~~head of the department. The department is administratively~~
11 ~~attached to the criminal justice department.~~]

12 B. All salaries and other expenses of the
13 department shall be paid by warrants of the secretary of
14 finance and administration, supported by vouchers signed by the
15 chief or [~~his~~] the chief's authorized representative and in
16 accordance with budgets approved by the state budget division
17 of the department of finance and administration."

18 SECTION 11. Section 31-15-5.1 NMSA 1978 (being Laws 1993,
19 Chapter 79, Section 2) is amended to read:

20 "31-15-5.1. PUBLIC DEFENDER AUTOMATION FUND CREATED--
21 ADMINISTRATION--DISTRIBUTION.--

22 A. The "public defender automation fund" is created
23 in the state treasury. The fund shall be administered by the
24 [~~public defender~~] department. The [~~public defender~~] department
25 shall report on the status of the fund to the legislative

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1 finance committee during each legislative interim.

2 B. All balances in the public defender automation
3 fund are appropriated to the [~~public defender~~] department for
4 the purchase and maintenance of automation systems for the
5 [~~public defender~~] department.

6 C. Payments from the public defender automation
7 fund shall be made [~~upon~~] pursuant to vouchers issued and
8 signed by the chief [~~public defender~~] upon warrants drawn by
9 the secretary of finance and administration. Any purchase or
10 lease-purchase agreement entered into pursuant to this section
11 shall be entered into in accordance with the Procurement Code."

12 SECTION 12. Section 31-15-7 NMSA 1978 (being Laws 1973,
13 Chapter 156, Section 7, as amended) is amended to read:

14 "31-15-7. CHIEF PUBLIC DEFENDER--GENERAL DUTIES AND
15 POWERS.--

16 A. The chief is responsible to the [~~governor~~]
17 commission for the operation of the department. It is [~~his~~]
18 the chief's duty to manage all operations of the department and
19 to:

20 (1) administer and carry out the provisions of
21 the Public Defender Act with which [~~he~~] the chief is charged;
22 [~~and~~]

23 (2) exercise authority over and provide
24 general supervision of employees of the department; and

25 (3) represent and advocate for the department

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1 and its clients.

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

6 (1) exercise general supervisory authority
7 over all employees of the department subject to the Personnel
8 Act;

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

11 (3) within the limitations of applicable
12 appropriations and applicable laws, employ and fix the
13 compensation of those persons necessary to discharge [~~his~~] the
14 chief's duties;

15 (4) organize the department into those units
16 [~~he~~] the chief deems necessary and appropriate to carry out
17 [~~his~~] the chief's duties;

18 (5) conduct research and studies that will
19 improve the operation of the department and the administration
20 of the Public Defender Act;

21 (6) provide courses of instruction and
22 practical training for employees of the department that will
23 improve the operation of the department and the administration
24 of the Public Defender Act;

25 (7) purchase or lease personal property and

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1 lease real property for the use of the department;

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

4 (9) submit an annual report and budget
5 covering the operation of the department together with
6 appropriate recommendations to the [~~governor, secretary of~~
7 ~~corrections~~] commission and, upon approval by the commission,
8 to the legislature and the governor;

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

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

14 (12) adopt a standard to determine indigency;

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

22 (14) require each person who desires legal
23 representation or another benefit under the Public Defender Act
24 to enter into a contract with the department agreeing to
25 reimburse the department if a determination is made that [~~he~~]

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1 the person was not indigent according to the standard for
2 indigency adopted by the department; and

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

9 SECTION 13. Section 31-15-11 NMSA 1978 (being Laws 1973,
10 Chapter 156, Section 11, as amended) is amended to read:

11 "31-15-11. COMPENSATION--PRIVATE PRACTICE OF LAW BY
12 ATTORNEYS EMPLOYED BY THE DEPARTMENT PROHIBITED.--

13 A. For the purposes of the exempt salaries plan
14 prepared pursuant to Section [~~5-4-31.1 NMSA 1953~~] 10-9-5 NMSA
15 1978, each district public defender shall be considered an
16 assistant in the offices of the chief [~~public defender~~].

17 B. All employees of the department other than the
18 chief [~~public defender~~] and district public defenders shall be
19 subject to the provisions of the Personnel Act. Once convened,
20 the commission shall develop and implement personnel policies
21 for the entire department. Upon adoption by the commission,
22 the policies developed by the commission shall govern personnel
23 of the department, notwithstanding the provisions of this
24 section.

25 C. No chief, district public defender or attorney

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1 hired on a full-time basis as an assistant to the chief or to a
2 district public defender, while [~~he holds~~] holding that office
3 or [~~is~~] employed in that capacity, shall engage in the private
4 practice of law. Attorneys who serve as counsel for indigent
5 persons under contract with the department may engage in the
6 private practice of law."

7 SECTION 14. TEMPORARY PROVISION.--The chief public
8 defender serving on the effective date of this act shall
9 continue serving until a chief public defender is appointed by
10 the public defender commission, but shall not serve after
11 January 1, 2014. Nothing in this act prohibits the public
12 defender commission from reappointing the chief public defender
13 serving on the effective date of this act.

14 SECTION 15. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.