

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 483

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

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; PROVIDING
TEMPORARY PROVISIONS; 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;

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]~~

1 metropolitan and magistrate courts of this state;

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

4 ~~[C.]~~ 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--RESTRICTION ON INDIVIDUAL MEMBER.--

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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 C. An individual member of the commission shall not
3 interfere with the discretion, professional judgment or
4 advocacy of a public defender, a public defender office, a
5 public defender contractor or an assigned counsel in the
6 representation of a public defender client."

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

9 "31-15-4. CHIEF PUBLIC DEFENDER--APPOINTMENT--
10 QUALIFICATIONS--REMOVAL--

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

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

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

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

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

5 (4) an attorney who has clearly demonstrated
6 management or executive experience.

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

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

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

17 A. [~~There is created the "public defender~~
18 ~~department".~~] The headquarters of the department shall be
19 maintained at Santa Fe. [~~The chief shall be the administrative~~
20 ~~head of the department. The department is administratively~~
21 ~~attached to the criminal justice department.~~]

22 B. All salaries and other expenses of the
23 department shall be paid by warrants of the secretary of
24 finance and administration, supported by vouchers signed by the
25 chief or [~~his~~] the chief's authorized representative and in

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1 accordance with budgets approved by the state budget division
2 of the department of finance and administration."

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

5 "31-15-5.1. PUBLIC DEFENDER AUTOMATION FUND CREATED--
6 ADMINISTRATION--DISTRIBUTION.--

7 A. The "public defender automation fund" is created
8 in the state treasury. The fund shall be administered by the
9 [~~public defender~~] department. The [~~public defender~~] department
10 shall report on the status of the fund to the legislative
11 finance committee during each legislative interim.

12 B. All balances in the public defender automation
13 fund are appropriated to the [~~public defender~~] department for
14 the purchase and maintenance of automation systems for the
15 [~~public defender~~] department.

16 C. Payments from the public defender automation
17 fund shall be made [~~upon~~] pursuant to vouchers issued and
18 signed by the chief [~~public defender~~] upon warrants drawn by
19 the secretary of finance and administration. Any purchase or
20 lease-purchase agreement entered into pursuant to this section
21 shall be entered into in accordance with the Procurement Code."

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

24 "31-15-7. CHIEF PUBLIC DEFENDER--GENERAL DUTIES AND
25 POWERS.--

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

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

8 (2) exercise authority over and provide
9 general supervision of employees of the department; and

10 (3) represent and advocate for the department
11 and its clients.

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 and budget
15 covering the operation of the department together with
16 appropriate recommendations to the [~~governor, secretary of~~
17 ~~corrections~~] commission and, upon approval by the commission,
18 to the 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

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

21 "31-15-11. COMPENSATION--PRIVATE PRACTICE OF LAW BY
 22 ATTORNEYS EMPLOYED BY THE DEPARTMENT PROHIBITED.--

23 A. For the purposes of the exempt salaries plan
 24 prepared pursuant to Section [~~5-4-31.1 NMSA 1953~~] 10-9-5 NMSA
 25 1978, each district public defender shall be considered an

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1 assistant in the offices of the chief [~~public defender~~].

2 B. All employees of the department other than the
3 chief [~~public defender~~] and district public defenders shall be
4 subject to the provisions of the Personnel Act. Once convened,
5 the commission shall develop and implement personnel policies
6 for the entire department. Upon adoption by the commission,
7 the policies developed by the commission shall govern personnel
8 of the department, notwithstanding the provisions of this
9 section.

10 C. No chief, district public defender or attorney
11 hired on a full-time basis as an assistant to the chief or to a
12 district public defender, while [~~he holds~~] holding that office
13 or [~~is~~] employed in that capacity, shall engage in the private
14 practice of law. Attorneys who serve as counsel for indigent
15 persons under contract with the department may engage in the
16 private practice of law."

17 SECTION 14. TEMPORARY PROVISION.--The chief public
18 defender serving on the effective date of this act shall
19 continue serving until a chief public defender is appointed by
20 the public defender commission, but shall not serve after
21 January 1, 2014. Nothing in this act prohibits the public
22 defender commission from reappointing the chief public defender
23 serving on the effective date of this act.

24 SECTION 15. TEMPORARY PROVISION.--Existing contracts,
25 agreements and other obligations in effect for the public

1 defender department shall continue to be binding on the public
2 defender department on and after the effective date of this
3 act.

4 SECTION 16. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

underscoring material = new
~~[bracketed material]~~ = delete