

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.

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
- (2) the governor's organized crime

prevention commission.

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

SECTION 2. Section 31-15-1 NMSA 1978 (being Laws 1973, Chapter 156, Section 1) is amended to read:

"31-15-1. SHORT TITLE.--Chapter 31, Article 15 NMSA 1978 may be cited as the "Public Defender Act"."

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

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

- A. "chief" means the chief public defender;
- B. "commission" means the public defender commission;
- C. "court" means the district, metropolitan and magistrate courts of this state;
- D. "department" means the public defender department;
- E. "district" means a public defender district; and
- F. "judge" means a judge of the district or metropolitan court or a magistrate."

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

"PUBLIC DEFENDER COMMISSION--MEMBERSHIP--TERMS--REMOVAL.--

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

- (1) the governor shall appoint one member;
- (2) the chief justice of the supreme court

shall appoint three members;

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

(4) the speaker of the house of representatives shall appoint one member;

(5) the majority floor leaders of each chamber shall each appoint one member; and

(6) the president pro tempore of the senate shall appoint one member.

B. The appointments made by the chief justice of the supreme court and the dean of the university of New Mexico school of law shall follow the appointments made by the other appointing authorities and shall be made in such a manner so that each of the two largest major political parties, as defined in the Election Code, shall be equally divided on the commission.

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

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

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

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

G. The commission is administratively attached to the department, and staff for the commission shall be provided by the department."

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

"PUBLIC DEFENDER COMMISSION--MEMBER QUALIFICATIONS.--

A. A person appointed to the commission shall have:

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

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

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

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

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

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

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

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

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

"PUBLIC DEFENDER COMMISSION--ORGANIZATION--MEETINGS.--

A. The commission shall hold its first meeting by September 1, 2013 and shall organize and elect a chair at that meeting. Three subsequent meetings shall be held in 2013. Thereafter, the commission shall meet at least four times a year, as determined by a majority of commission members.

Meetings shall be held at the call of the chair or the chief or at the request of four commission members.

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

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

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

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

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

"PUBLIC DEFENDER COMMISSION--POWERS AND DUTIES--
RESTRICTION ON INDIVIDUAL MEMBER.--

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

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

- (1) the minimum experience, training and

qualifications for appointed, contract and staff attorneys in both adult and juvenile cases in coordination with the state personnel office;

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

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

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

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

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

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

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

A. The chief shall be the administrative head of the department. The commission shall appoint a chief for a

term of four years by approval of two-thirds of its members. The commission may reappoint a chief for subsequent terms. A vacancy in the office of the chief shall be filled by appointment by the commission.

B. The commission shall appoint as chief only a person with the following qualifications:

(1) an attorney licensed to practice law in New Mexico or who will be so licensed within one year of appointment;

(2) an attorney whose practice of law has been active for at least five years immediately preceding the date of this appointment;

(3) an attorney whose practice of law has included a minimum of five years' experience in defense of persons accused of crime; and

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

C. The chief may be removed by the commission; provided, however, that no removal shall be made without notice of hearing and an opportunity to be heard having been first given to the chief."

SECTION 9. Section 31-15-5 NMSA 1978 (being Laws 1978, Chapter 14, Section 1) is amended to read:

"31-15-5. PUBLIC DEFENDER DEPARTMENT--ADMINISTRATION--
FINANCE.--

A. The headquarters of the department shall be maintained at Santa Fe.

B. All salaries and other expenses of the department shall be paid by warrants of the secretary of finance and administration, supported by vouchers signed by the chief or the chief's authorized representative and in accordance with budgets approved by the state budget division of the department of finance and administration."

SECTION 10. Section 31-15-5.1 NMSA 1978 (being Laws 1993, Chapter 79, Section 2) is amended to read:

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

A. The "public defender automation fund" is created in the state treasury. The fund shall be administered by the department. The department shall report on the status of the fund to the legislative finance committee during each legislative interim.

B. All balances in the public defender automation fund are appropriated to the department for the purchase and maintenance of automation systems for the department.

C. Payments from the public defender automation fund shall be made pursuant to vouchers issued and signed by the chief upon warrants drawn by the secretary of finance and administration. Any purchase or lease-purchase agreement entered into pursuant to this section shall be entered into in

accordance with the Procurement Code."

SECTION 11. 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 commission for the operation of the department. It is the chief's duty to manage all operations of the department and to:

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

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

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

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

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

(2) delegate authority to subordinates as the chief deems necessary and appropriate;

(3) within the limitations of applicable appropriations and applicable laws, employ and fix the

compensation of those persons necessary to discharge the chief's duties;

(4) organize the department into those units the chief deems necessary and appropriate to carry out the chief's duties;

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

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

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

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

(9) submit an annual report and budget covering the operation of the department together with appropriate recommendations to the commission and, upon approval by the commission, to the legislature and the governor;

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

(11) formulate a fee schedule for attorneys

who are not employees of the department who serve as counsel for indigent persons under the Public Defender Act;

(12) adopt a standard to determine indigency;

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

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

(15) certify contracts and expenditures for litigation expenses, including contracts and expenditures for professional and nonprofessional experts, investigators and witness fees, but not including attorney contracts, pursuant to the provisions of the Procurement Code."

SECTION 12. TEMPORARY PROVISION.--The chief public defender serving on the effective date of this act shall continue serving until a chief public defender is appointed by

the public defender commission, but shall not serve after January 1, 2014. Nothing in this act prohibits the public defender commission from reappointing the chief public defender serving on the effective date of this act.

SECTION 13. TEMPORARY PROVISION.--Existing contracts, agreements and other obligations in effect for the public defender department shall continue to be binding on the public defender department on and after the effective date of this act.