

1 HOUSE BILL 338

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO THE PUBLIC DEFENDER DEPARTMENT; ALLOWING THE PUBLIC
12 DEFENDER COMMISSION TO ADOPT PERSONNEL POLICIES FOR THE PUBLIC
13 DEFENDER DEPARTMENT AND EXEMPT DEPARTMENT EMPLOYEES FROM THE
14 PERSONNEL ACT; MANDATING THAT THE PERSONNEL ACT IS THE MINIMUM
15 STANDARD FOR DEPARTMENT EMPLOYEES; REQUIRING THE APPELLATE
16 DIVISION TO BE HEADED BY A DISTRICT PUBLIC DEFENDER; MAKING AN
17 APPROPRIATION.

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

20 SECTION 1. Section 10-9-4 NMSA 1978 (being Laws 1961,
21 Chapter 240, Section 4, as amended) is amended to read:

22 "10-9-4. COVERAGE OF SERVICE.--The Personnel Act and the
23 service cover all state positions except:

24 A. officials elected by popular vote or appointed
25 to fill vacancies to elective offices;

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1 B. members of boards and commissions and heads of
2 agencies appointed by the governor;

3 C. heads of agencies appointed by boards or
4 commissions;

5 D. directors of department divisions;

6 E. those in educational institutions and in public
7 schools;

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

13 G. those in the governor's office;

14 H. those in the state militia or the commissioned
15 officers of the New Mexico state police division of the
16 department of public safety;

17 I. those in the judicial branch of government;

18 J. those in the public defender department, as
19 determined by the public defender commission;

20 [~~J.~~] K. those in the legislative branch of
21 government;

22 [~~K.~~] L. not more than two assistants and one
23 secretary in the office of each official listed in Subsections
24 A, B and C of this section, excluding members of boards and
25 commissions in Subsection B of this section;

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1 ~~[E.]~~ M. those of a professional or scientific
2 nature ~~[which]~~ that are temporary in nature;
3 ~~[M.]~~ N. those filled by patients or inmates in
4 charitable, penal or correctional institutions;
5 ~~[N.]~~ O. state employees if the ~~[personnel]~~ board in
6 its discretion decides that the position is one of
7 policymaking; and
8 ~~[O.]~~ P. disadvantaged youth under twenty-two years
9 of age regularly enrolled or to be enrolled in a secondary
10 educational institution approved by the ~~[state board of]~~ public
11 education department or in an accredited state institution of
12 advanced learning or vocational training and who are to be
13 employed for not more than seven hundred twenty hours during
14 any calendar year:
15 (1) the term "disadvantaged youth" shall be
16 defined for purposes of this exemption by regulation duly
17 promulgated by the board; and
18 (2) the board shall:
19 (a) require that all the criteria of
20 this subsection have been met;
21 (b) establish employment lists for the
22 certification of the highest-standing candidates to the
23 prospective employers; and
24 (c) establish the pay rates for such
25 employees."

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1 SECTION 2. Section 31-15-2.4 NMSA 1978 (being Laws 2013,
2 Chapter 195, Section 7) is amended to read:

3 "31-15-2.4. PUBLIC DEFENDER COMMISSION--POWERS AND
4 DUTIES--RESTRICTION ON INDIVIDUAL MEMBER.--

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

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

14 (1) the minimum experience, training and
15 qualifications for appointed, contract and staff attorneys in
16 both adult and juvenile cases in coordination with the state
17 personnel office;

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

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

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

25 (5) qualifications and performance of

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1 appointed, contract and staff attorneys in capital cases at the
2 trial, appellate and post-conviction levels; and

3 (6) personnel policies and procedures,
4 including the development of a public defender personnel act,
5 to establish an independent system of personnel administration
6 for the department; provided that no employee of the
7 department, except the chief, assistant chief public defenders
8 and district public defenders, shall have fewer rights than
9 under the Personnel Act and under administrative rules
10 applicable to state employees on the effective date of this
11 2014 act.

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

17 SECTION 3. Section 31-15-7 NMSA 1978 (being Laws 1973,
18 Chapter 156, Section 7, as amended) is amended to read:

19 "31-15-7. CHIEF PUBLIC DEFENDER--GENERAL DUTIES AND
20 POWERS.--

21 A. The chief is responsible to the commission for
22 the operation of the department. It is the chief's duty to
23 manage all operations of the department and to:

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

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

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

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

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

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

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

18 (4) organize the department into those units
19 the chief deems necessary and appropriate to carry out the
20 chief's 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

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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 that
6 reflect the operation and administration of the department;

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

12 (10) serve as defense counsel under the Public
13 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 Act
21 after a determination is made that the person 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;

25 (14) require each person who desires legal

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1 representation or another benefit under the Public Defender Act
2 to enter into a contract with the department agreeing to
3 reimburse the department if a determination is made that the
4 person 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 to
10 the provisions of the Procurement Code."

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

13 "31-15-8. DUTY OF CHIEF PUBLIC DEFENDER TO ESTABLISH
14 APPELLATE DIVISION--DUTY OF APPELLATE DIVISION.--

15 A. The chief shall establish within the department
16 an appellate division. The appellate division shall be headed
17 by a district public defender.

18 B. The appellate division shall assist the chief
19 and district public defenders by providing representation
20 before the court of appeals and the supreme court in appellate,
21 review and postconviction proceedings involving persons
22 represented under the Public Defender Act.

23 C. The appellate division shall assist private
24 counsel not employed under the Public Defender Act in any
25 appellate, review or postconviction remedy proceeding by

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1 providing representation for persons entitled to representation
2 under the Indigent Defense Act."

3 SECTION 5. Section 31-15-11 NMSA 1978 (being Laws 1973,
4 Chapter 156, Section 11, as amended) is amended to read:

5 "31-15-11. COMPENSATION--PRIVATE PRACTICE OF LAW BY
6 ATTORNEYS EMPLOYED BY THE DEPARTMENT PROHIBITED.--

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

11 B. All employees of the department other than the
12 chief [~~public defender~~], assistant chief public defenders and
13 district public defenders shall be subject to the provisions of
14 the Personnel Act, unless the employees are exempted from the
15 Personnel Act by the commission.

16 C. Before the commission may exempt the department
17 from the Personnel Act, the commission shall develop and adopt
18 personnel policies for the department; provided that no
19 employee of the department, except the chief, assistant chief
20 public defenders and district public defenders, shall have
21 fewer rights under these policies than under the Personnel Act
22 and under administrative rules applicable to state employees on
23 the effective date of this 2014 act.

24 [~~G-~~] D. No chief, assistant chief public defender,
25 district public defender or attorney hired on a full-time basis

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

7 SECTION 6. APPROPRIATION.--Twenty thousand dollars
8 (\$20,000) is appropriated from the general fund to the public
9 defender department for expenditure in fiscal year 2015 to
10 develop personnel policies and procedures for the department.
11 Any unexpended or unencumbered balance remaining at the end of
12 fiscal year 2015 shall revert to the general fund.