

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 338

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

AN ACT

RELATING TO THE PUBLIC DEFENDER DEPARTMENT; ALLOWING THE PUBLIC DEFENDER COMMISSION TO ADOPT PERSONNEL POLICIES FOR THE PUBLIC DEFENDER DEPARTMENT AND EXEMPT DEPARTMENT EMPLOYEES FROM THE PERSONNEL ACT; MANDATING THAT THE PERSONNEL ACT IS THE MINIMUM STANDARD FOR DEPARTMENT EMPLOYEES; REQUIRING THE APPELLATE DIVISION TO BE HEADED BY THE APPELLATE DEFENDER; MAKING AN APPROPRIATION.

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

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

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

A. officials elected by popular vote or appointed 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, upon
19 implementation of personnel policies and rules by the public
20 defender commission;

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

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

1 commissions in Subsection B of this section;

2 ~~[L.]~~ M. those of a professional or scientific
3 nature ~~[which]~~ that are temporary in nature;

4 ~~[M.]~~ N. those filled by patients or inmates in
5 charitable, penal or correctional institutions;

6 ~~[N.]~~ O. state employees if the ~~[personnel]~~ board in
7 its discretion decides that the position is one of
8 policymaking; and

9 ~~[O.]~~ P. disadvantaged youth under twenty-two years
10 of age regularly enrolled or to be enrolled in a secondary
11 educational institution approved by the ~~[state board of]~~ public
12 education department or in an accredited state institution of
13 advanced learning or vocational training and who are to be
14 employed for not more than seven hundred twenty hours during
15 any calendar year:

16 (1) the term "disadvantaged youth" shall be
17 defined for purposes of this exemption by regulation duly
18 promulgated by the board; and

19 (2) the board shall:

20 (a) require that all the criteria of
21 this subsection have been met;

22 (b) establish employment lists for the
23 certification of the highest-standing candidates to the
24 prospective employers; and

25 (c) establish the pay rates for such

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1 employees."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (1) administer and carry out the provisions of

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1 the Public Defender Act with which the chief is charged;

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

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

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

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

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

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

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

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

25 (6) provide courses of instruction and

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1 practical training for employees of the department that will
2 improve the operation of the department and the administration
3 of the Public Defender Act;

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

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

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

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

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

18 (12) adopt a standard to determine indigency;

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

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

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

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

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

16 A. The chief shall establish within the department
17 an appellate division. The appellate division shall be headed
18 by the appellate defender.

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

24 C. The appellate division shall assist private
25 counsel not employed under the Public Defender Act in any

1 appellate, review or postconviction remedy proceeding by
 2 providing representation for persons entitled to representation
 3 under the Indigent Defense Act."

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

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

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

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

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

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1 2014 act.

2 [~~E~~] D. No chief, assistant chief public defender,
3 appellate defender, district public defender or attorney hired
4 on a full-time basis as an assistant to the chief or to a
5 district public defender, while [~~he holds~~] holding that office
6 or [~~is~~] employed in that capacity, shall engage in the private
7 practice of law. Attorneys who serve as counsel for indigent
8 persons under contract with the department may engage in the
9 private practice of law."

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

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