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HOUSE BILL 193

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Al Park

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO THE PUBLIC DEFENDER; CREATING THE PUBLIC DEFENDER
COMMISSION TO OVERSEE THE OPERATION OF THE PUBLIC DEFENDER
DEPARTMENT AS AN ADJUNCT 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; MAKING AN APPROPRIATION.

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

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

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

Section 2. 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

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1 Act:

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

3 B. "commission" means the public defender
4 commission;

5 ~~[A.]~~ C. "court" means the district, [courts]
6 metropolitan and magistrate courts of this state;

7 ~~[B.]~~ D. "department" means the public defender
8 department;

9 ~~[C.]~~ E. "district" means [the] a public defender
10 district; and

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

13 E. "chief" means the chief public defender]."

14 Section 3. A new section of the Public Defender Act is
15 enacted to read:

16 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--CREATED--
17 MEMBERSHIP--TERMS--REMOVAL.--

18 A. The "public defender commission" is created and
19 consists of eleven members. Members shall be appointed as
20 follows:

21 (1) the governor shall appoint two members,
22 one of whom shall be a member of an organization that advocates
23 on behalf of persons with mental illness;

24 (2) the chief justice of the supreme court
25 shall appoint two members, one of whom shall be a member of an

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1 organization that advocates on behalf of homeless persons;

2 (3) the dean of the university of New Mexico
3 school of law shall appoint two members, one of whom shall be a
4 member of an organization that advocates on behalf of an ethnic
5 minority and one of whom shall be from a county with a
6 population of not more than one hundred twenty thousand
7 persons;

8 (4) the president of the state bar of New
9 Mexico shall appoint one member who shall be from a county with
10 a population of not more than one hundred twenty thousand
11 persons;

12 (5) the speaker of the house of
13 representatives shall appoint one member;

14 (6) the president pro tempore of the senate
15 shall appoint one member;

16 (7) the New Mexico criminal defense lawyers
17 association shall appoint one member; and

18 (8) the juvenile justice advisory committee
19 shall appoint one member.

20 B. Initial appointments to the commission shall be
21 made by August 1, 2008. Initial terms of members appointed by
22 the dean of the university of New Mexico school of law, the New
23 Mexico criminal defense lawyers association and the juvenile
24 justice advisory committee shall be for four years; initial
25 terms of members appointed by the president of the state bar of

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1 New Mexico, the speaker of the house of representatives and the
2 president pro tempore of the senate shall be for three years;
3 and initial terms of members appointed by the governor and the
4 chief justice of the supreme court shall be for two years.

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

11 D. A member may be removed by the commission for
12 malfeasance, misfeasance or neglect of duty. If a member's
13 professional status changes to render the member ineligible
14 pursuant to Section 4 of this 2008 act, the member shall resign
15 immediately.

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

20 F. The commission is administratively attached to
21 the department, and staff for the commission shall be provided
22 by the department."

23 Section 4. A new section of the Public Defender Act is
24 enacted to read:

25 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--MEMBER

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1 QUALIFICATIONS.--

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

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

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

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

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

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

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

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

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

22 Section 5. A new section of the Public Defender Act is
23 enacted to read:

24 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--ORGANIZATION--
25 MEETINGS.--

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1 A. The commission shall hold its first meeting by
2 September 1, 2008 and shall organize and elect a chair at that
3 meeting. Thereafter, three or more meetings shall be held
4 annually as determined by a majority of commission members.
5 Meetings shall be held at the call of the chair or the chief or
6 at the request of four commission members.

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

10 C. The commission may adopt rules and shall keep a
11 record of its proceedings.

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

14 Section 6. A new section of the Public Defender Act is
15 enacted to read:

16 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--POWERS AND
17 DUTIES.--

18 A. The commission shall exercise independent
19 oversight of the department and provide guidance to the chief
20 in the administration of the department and the representation
21 of indigent persons pursuant to the Public Defender Act.

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

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

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

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

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

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

14 C. The commission shall not interfere with the
15 discretion, judgment or advocacy of a public defender office, a
16 public defender contractor or an assigned counsel in the
17 representation of individual cases.

18 D. The commission shall not interfere with the
19 duties of the chief, such as the administration of the
20 department, the allocation and distribution of resources,
21 management of personnel and contracts and other duties set
22 forth in Section 31-15-7 NMSA 1978."

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

25 "31-15-4. CHIEF PUBLIC DEFENDER--APPOINTMENT--

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1 QUALIFICATIONS--REMOVAL.--

2 A. The [~~governor shall appoint the~~] chief [who]
3 shall be the administrative head of the department. [~~Any~~] The
4 commission shall appoint a chief for a term of four years by
5 approval of two-thirds of its members. The commission may
6 reappoint a chief for subsequent terms. A vacancy in the
7 office of the chief shall be filled by appointment [~~of~~] by the
8 [~~governor~~] commission.

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

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

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

17 (3) an attorney whose practice of law has
18 clearly demonstrated experience in defense [~~or prosecution~~] of
19 persons accused of crime [~~in this state~~]; and

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

22 C. The chief [~~shall serve at the pleasure of the~~
23 ~~governor~~] may be removed by the commission only for
24 incompetence, neglect of duty or malfeasance in office;
25 provided, however, that no removal shall be made without notice

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1 of hearing and an opportunity to be heard having been first
2 given to the chief."

3 Section 8. 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" is created as an adjunct agency of the executive
9 branch. The headquarters of the department shall be maintained
10 at Santa Fe. The chief shall be the administrative head of the
11 department. [~~The department is administratively attached to~~
12 ~~the criminal justice department.~~] The commission shall oversee
13 the department and provide guidance to the chief.

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

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

22 "31-15-7. CHIEF PUBLIC DEFENDER--GENERAL DUTIES AND
23 POWERS.--

24 A. The chief is responsible to the [~~governor~~]
25 commission for the operation of the department. It is [~~his~~]

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1 the chief's duty to manage all operations of the department and
2 to:

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

6 (2) exercise authority over and provide
7 general supervision of employees of the department.

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

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

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

17 (3) within the limitations of applicable
18 appropriations and applicable laws, employ and fix the
19 compensation of those persons necessary to discharge [~~his~~] the
20 chief's duties;

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

24 (5) conduct research and studies that will
25 improve the operation of the department and the administration

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1 of the Public Defender Act;

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

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

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

10 (9) submit an annual report and budget
11 covering the operation of the department together with
12 appropriate recommendations to the [~~governor, secretary of~~
13 ~~corrections~~] commission and, upon approval by the commission,
14 to the legislature and the governor;

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

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

20 (12) adopt a standard to determine indigency;

21 (13) provide for the collection of
22 reimbursement from each person who has received legal
23 representation or another benefit under the Public Defender Act
24 after a determination is made that [~~he~~] the person was not
25 indigent according to the standard for indigency adopted by the

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1 department. Any amounts recovered shall be paid to the state
2 treasurer for credit to the general fund;

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

9 (15) certify contracts and expenditures for
10 litigation expenses, including contracts and expenditures for
11 professional and nonprofessional experts, investigators and
12 witness fees, but not including attorney contracts, pursuant to
13 the provisions of the Procurement Code [~~Section 13-1-98 NMSA~~
14 ~~1978~~]."

15 Section 10. Section 9-3-11 NMSA 1978 (being Laws 1977,
16 Chapter 257, Section 12) is amended to read:

17 "9-3-11. ADMINISTRATIVE ATTACHMENT.--

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

- 20 (1) the adult parole board; and
- 21 (2) the governor's organized crime prevention
- 22 commission [~~and~~
- 23 ~~(3) the public defender department~~].

24 B. All powers and duties vested in the entities
25 enumerated in this section shall remain unamended by the

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1 provisions of the [~~Criminal Justice~~] Corrections Department
2 Act."

3 Section 11. TEMPORARY PROVISION.--The chief public
4 defender serving on June 30, 2008 shall continue serving until
5 a chief public defender is appointed by the public defender
6 commission, but shall not serve after January 1, 2009. Nothing
7 in this act prohibits the public defender commission from
8 reappointing the chief public defender serving on June 30,
9 2008.

10 Section 12. APPROPRIATION.--One hundred thousand dollars
11 (\$100,000) is appropriated from the general fund to the public
12 defender department for expenditure in fiscal year 2009 for
13 administrative costs related to the creation and operation of
14 the public defender commission and for per diem and mileage of
15 commissioners. Any unexpended or unencumbered balance
16 remaining at the end of fiscal year 2009 shall revert to the
17 general fund.

18 Section 13. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2008.