

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.

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;

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

C. heads of agencies appointed by boards or commissions;

D. directors of department divisions;

E. those in educational institutions and in public schools;

F. those employed by state institutions and by state agencies providing educational programs and who are required to hold valid certificates as certified school

instructors as defined in Section 22-1-2 NMSA 1978 issued by the public education department;

G. those in the governor's office;

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

I. those in the judicial branch of government;

J. those in the public defender department, upon implementation of personnel policies and rules by the public defender commission;

K. those in the legislative branch of government;

L. not more than two assistants and one secretary in the office of each official listed in Subsections A, B and C of this section, excluding members of boards and commissions in Subsection B of this section;

M. those of a professional or scientific nature that are temporary in nature;

N. those filled by patients or inmates in charitable, penal or correctional institutions;

O. state employees if the board in its discretion decides that the position is one of policymaking; and

P. disadvantaged youth under twenty-two years of age regularly enrolled or to be enrolled in a secondary educational institution approved by the public education department or in an accredited state institution of advanced

learning or vocational training and who are to be employed for not more than seven hundred twenty hours during any calendar year:

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

(2) the board shall:

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

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

© establish the pay rates for such employees."

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

"31-15-2.4. 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;

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

(6) personnel policies and procedures, including the development of public defender personnel rules, to establish an independent system of personnel administration for the department; provided that no employee of the department, except the chief, assistant chief public defenders, appellate defender and district public defenders, shall have fewer rights than under the Personnel Act and under administrative rules applicable to state employees on the

effective date of this 2014 act.

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 3. 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;

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

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

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

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

C. The appellate division shall assist private counsel not employed under the Public Defender Act in any appellate, review or postconviction remedy proceeding by providing representation for persons entitled to representation under the Indigent Defense Act."

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

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

A. For the purposes of the exempt salaries plan prepared pursuant to Section 10-9-5 NMSA 1978, each district public defender shall be considered an assistant in the

offices of the chief.

B. All employees of the department other than the chief, assistant chief public defenders, appellate defender and district public defenders shall be subject to the provisions of the Personnel Act, unless the employees are exempted from the Personnel Act by the commission.

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

D. No chief, assistant chief public defender, appellate defender, district public defender or attorney hired on a full-time basis as an assistant to the chief or to a district public defender, while holding that office or employed in that capacity, shall engage in the private practice of law. Attorneys who serve as counsel for indigent persons under contract with the department may engage in the private practice of law." _____