

1 SENATE BILL 127

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO CHILD WELFARE; ENACTING THE FAMILY REPRESENTATION
12 AND ADVOCACY ACT; CREATING THE OFFICE OF FAMILY REPRESENTATION
13 AND ADVOCACY; ESTABLISHING DUTIES OF THE DIRECTOR; CREATING THE
14 FAMILY REPRESENTATION AND ADVOCACY OVERSIGHT COMMISSION.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
18 cited as the "Family Representation and Advocacy Act".

19 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
20 Family Representation and Advocacy Act:

21 A. "commission" means the family representation and
22 advocacy oversight commission;

23 B. "director" means the director of the office of
24 family representation and advocacy; and

25 C. "office" means the office of family

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1 representation and advocacy.

2 SECTION 3. [NEW MATERIAL] OFFICE CREATED--DUTIES.--

3 A. The "office of family representation and
4 advocacy" is created.

5 B. The office shall:

6 (1) work closely with the administrative
7 office of the courts to leverage federal funding pursuant to
8 Title IV-E of the Social Security Act;

9 (2) appoint, compensate, evaluate and retain
10 attorneys and other staff in a manner that provides for the
11 highest quality of legal representation for parents and
12 children in child welfare cases;

13 (3) develop and continuously approve practice
14 models and standards based on child welfare best practices;

15 (4) provide zealous representation of all
16 clients;

17 (5) ensure that clients are provided with due
18 process and procedural fairness; and

19 (6) provide positive outcomes for children and
20 their families, including increased reunification rates and
21 swift resolution of cases.

22 SECTION 4. [NEW MATERIAL] DUTY OF DIRECTOR TO ESTABLISH
23 APPELLATE DIVISION--DUTY OF APPELLATE DIVISION.--

24 A. The director shall establish an appellate
25 division within the office. The appellate division shall be

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1 lead by a chief appellate attorney.

2 B. The appellate division shall assist the director
3 by providing representation before the court of appeals and the
4 supreme court in appellate proceedings involving persons
5 represented pursuant to the Family Representation and Advocacy
6 Act and the Children's Code.

7 SECTION 5. [NEW MATERIAL] DUTY OF DIRECTOR TO ESTABLISH
8 REGIONAL OFFICES--APPOINTMENT OF REGIONAL MANAGERS.--

9 A. The director shall establish at least five
10 regional offices that align with the five regional offices of
11 the children, youth and families department to accommodate all
12 judicial districts that exist within the five regions. One
13 regional office shall be located each in the northwest,
14 northeast, southwest, southeast and the Bernalillo county
15 metropolitan area.

16 B. The director shall appoint a regional manager in
17 each region. The regional manager shall administer the
18 operation of the region and shall serve at the pleasure of the
19 director. Each regional manager shall reside in this state and
20 shall be an attorney licensed to practice law in the highest
21 courts of the state.

22 SECTION 6. [NEW MATERIAL] FAMILY REPRESENTATION AND
23 ADVOCACY OVERSIGHT COMMISSION--MEMBERSHIP--TERMS--REMOVAL.--

24 A. The "family representation and advocacy
25 oversight commission" is created.

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1 B. The commission consists of thirteen members,
2 including:

3 (1) the director of the university of New
4 Mexico school of law's Corinne Wolfe center for child and
5 family justice, or the director's designee;

6 (2) the director of the administrative office
7 of the courts' court improvement project, or the director's
8 designee;

9 (3) the dean of the New Mexico state
10 university school of social work or the dean of New Mexico
11 highlands university, or the dean's designee, in alternating
12 terms;

13 (4) one member with expertise in family
14 representation appointed by the governor;

15 (5) five members appointed by the chief
16 justice of the New Mexico supreme court, including:

17 (a) two members that either served as
18 former children's court judges or attorneys in the child
19 welfare system; and

20 (b) three members, including: 1) a
21 juvenile with experience living in the legal custody of the
22 children, youth and families department; 2) a parent with
23 experience having one or more children living in the legal
24 custody of the children, youth and families department; and 3)
25 a member with experience with the children, youth and families

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1 department as a youth, parent or both;

2 (6) two members appointed by the speaker of
3 the house of representatives, one from each major political
4 party, one from an urban area of the state and one from a rural
5 area of the state; and

6 (7) two members appointed by the president pro
7 tempore of the senate, one from each major political party, one
8 from an urban area of the state and one from a rural area of
9 the state.

10 C. Initial appointments to the commission shall be
11 made by March 30, 2022. If a position remains vacant on March
12 30, 2022, the supreme court shall fill the vacancy. The
13 director of the university of New Mexico school of law's
14 Corinne Wolfe center for child and family justice and the
15 director of the administrative office of the courts' court
16 improvement project shall serve as permanent members. Initial
17 terms of members appointed by the speaker of the house of
18 representatives, the president pro tempore of the senate and
19 the governor shall be for two years. Initial terms of members
20 appointed by the chief justice of the supreme court and the
21 dean of a school of social work shall be for three years.

22 D. Subsequent terms for appointed members shall be
23 for four years. Appointed commission members shall not serve
24 more than two consecutive terms. An appointed commission
25 member shall serve until the member's successor has been

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1 appointed and qualified. The commission shall fill a vacancy
2 for the remainder of the unexpired term pursuant to Subsection
3 A of this section.

4 E. A member may be removed by the commission for
5 malfeasance, misfeasance or neglect of duty.

6 F. If a member's professional status changes in a
7 way that renders the member ineligible pursuant to the
8 provisions of the Family Representation and Advocacy Act, the
9 member shall resign immediately.

10 G. Members of the commission shall be entitled to
11 compensation pursuant to the provisions of the Per Diem and
12 Mileage Act and shall not receive other perquisite,
13 compensation or allowance.

14 SECTION 7. [NEW MATERIAL] FAMILY REPRESENTATION AND
15 ADVOCACY OVERSIGHT COMMISSION--MEMBER QUALIFICATIONS.--

16 A. A member of the commission shall:

17 (1) possess significant experience in the
18 representation of children, youth, parents, custodians or
19 guardians in abuse and neglect proceedings;

20 (2) possess significant experience with the
21 child welfare system as a parent, custodian, guardian or former
22 foster youth; or

23 (3) demonstrate a commitment to high-quality
24 legal representation or to working with and advocating for the
25 population served by the office of family representation and

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1 advocacy.

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

4 (1) current employees of the office of the
5 children, youth and families department;

6 (2) current employees of the office;

7 (3) current judges, judicial officials or
8 their employees; and

9 (4) persons who currently contract with or
10 receive funding from the office or their employees.

11 SECTION 8. [NEW MATERIAL] FAMILY REPRESENTATION AND
12 ADVOCACY OVERSIGHT COMMISSION--ORGANIZATION--MEETINGS.--

13 A. The chief justice of the supreme court shall
14 appoint an interim director to serve until the commission
15 appoints a director no later than July 1, 2021.

16 B. The commission shall hold its first meeting no
17 later than thirty days after it has completed the appointment
18 process and shall elect a chair at that meeting. Thereafter,
19 the commission shall meet at least four times a year, as
20 determined by a majority of commission members. Meetings shall
21 be held at the call of the chair or director or at the request
22 of four commission members.

23 C. The commission shall appoint a permanent
24 director no later than December 31, 2022.

25 D. A majority of commission members constitutes a

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1 quorum for the transaction of business, and an action by the
2 commission shall not be valid unless seven or more members
3 concur.

4 E. The commission may adopt rules and shall keep a
5 record of its proceedings.

6 F. A commission member may select a designee to
7 serve in the member's place no more than once per year.

8 SECTION 9. [NEW MATERIAL] FAMILY REPRESENTATION AND
9 ADVOCACY OVERSIGHT COMMISSION--POWERS AND DUTIES--RESTRICTION
10 ON INDIVIDUAL MEMBERS.--

11 A. The commission shall exercise independent
12 oversight of the office to review and approve standards and
13 provide guidance and support to the director that:

14 (1) promotes positive outcomes for families;

15 (2) affirms, respects and supports the
16 diversity of families in this state;

17 (3) promotes due process and procedural
18 fairness;

19 (4) is consistent with performance standards
20 and legal ethics; and

21 (5) complies with state and federal law.

22 B. The commission shall review and approve fair and
23 consistent policies for the operation of the office and the
24 provision of services to children and adults whose children are
25 or are at risk of being placed in legal custody of the

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1 children, youth and families department.

2 C. A member of the commission shall not interfere
3 with the discretion, professional judgment or advocacy of an
4 appointed attorney, contract attorney, staff attorney, contract
5 employees or office employees in the representation and
6 advocacy of a client pursuant to the Family Representation and
7 Advocacy Act.

8 SECTION 10. [NEW MATERIAL] OFFICE OF FAMILY
9 REPRESENTATION AND ADVOCACY--ADMINISTRATION--FINANCE.--

10 A. The headquarters of the office shall be located
11 in the Bernalillo county metropolitan region.

12 B. All salaries and other expenses of the office
13 shall be paid upon warrants drawn by the secretary of finance
14 and administration, supported by vouchers signed by the
15 director or the director's authorized representative and in
16 accordance with budgets approved by the administrative office
17 of the courts.

18 SECTION 11. [NEW MATERIAL] OFFICE OF FAMILY
19 REPRESENTATION AND ADVOCACY--GIFTS, GRANTS AND DONATIONS.--On
20 behalf of the state, the office may receive gifts, grants,
21 donations or bequests from any source to be used in carrying
22 out the purposes of the Family Representation and Advocacy Act.

23 SECTION 12. [NEW MATERIAL] DIRECTOR--APPOINTMENT--
24 QUALIFICATIONS--REMOVAL.--

25 A. The director shall be the administrative head of
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1 the office. The commission shall appoint a director for a term
2 of four years upon approval of two-thirds of its members. The
3 commission may reappoint a director for subsequent terms. A
4 vacancy in the office of director shall be filled by
5 appointment of the commission.

6 B. The commission shall appoint as director an
7 attorney with the following qualifications:

8 (1) licensed to practice law in this state or
9 will be licensed within one year of appointment;

10 (2) at least five years experience in the
11 field of representation of children or adults in abuse and
12 neglect cases in a practicing attorney, management, supervisory
13 or policymaking position or equivalent experience as determined
14 by the commission; and

15 (3) clearly demonstrated management or
16 executive experience.

17 C. The director may be removed by the commission;
18 provided that no removal shall occur without notice and an
19 opportunity for a hearing.

20 SECTION 13. [NEW MATERIAL] DIRECTOR--GENERAL DUTIES AND
21 POWERS.--

22 A. The director is responsible to the commission
23 for the operation of the office. The director shall manage all
24 operations of the office and shall:

25 (1) administer and carry out the provisions of

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1 the Family Representation and Advocacy Act;

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

4 (3) oversee funding, including federal
5 funding;

6 (4) administer and supervise contracts for
7 attorneys and other employees; and

8 (5) represent and advocate for the office and
9 its clients.

10 B. The director is granted every power express and
11 implied that is necessary for the fulfillment of the director's
12 duties, including authority to:

13 (1) set standards relating to:

14 (a) the minimum experience, training and
15 qualifications for contract and staff attorneys for child
16 welfare cases;

17 (b) monitoring and evaluating contract
18 and staff attorneys, other contract and office staff, including
19 attorneys appointed to cases to resolve conflicts of interest;

20 (c) ethically responsible caseloads and
21 workloads, including load monitoring protocols for staff
22 attorneys, contract attorneys, office staff and contract staff;
23 and

24 (d) the competent and efficient
25 representation of clients whose cases present conflicts of

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1 interest;

2 (2) exercise general supervisory authority
3 over all employees of the office;

4 (3) delegate authority to subordinates as the
5 director deems necessary and appropriate;

6 (4) employ and fix the compensation of persons
7 necessary to discharge the director's duties and enter into
8 contracts with private attorneys and law firms as necessary to
9 carry out the provisions of the Family Representation and
10 Advocacy Act;

11 (5) organize the office into units as the
12 director deems necessary and appropriate to carry out the
13 director's duties;

14 (6) develop and annually update a strategic
15 plan with measurable goals and metrics;

16 (7) conduct research and studies that will
17 improve the operation of the office and the administration of
18 the Family Representation and Advocacy Act;

19 (8) provide courses of instruction and
20 practical training for employees of the office that will
21 improve the operation of the office and the administration of
22 the Family Representation and Advocacy Act;

23 (9) purchase or lease property and lease real
24 property for use of the office;

25 (10) maintain records and statistical data

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1 that reflect the operation and administration of the office,
2 including a system that allows the office to:

3 (a) collect and analyze data on outcomes
4 for children and families;

5 (b) maintain client confidentiality of
6 information;

7 (c) evaluate the effectiveness of the
8 office's programs and practices; and

9 (d) inform and guide continuous quality
10 improvement;

11 (11) submit an annual report and budget for
12 the operation of the office;

13 (12) formulate a fee schedule for attorneys or
14 law firms who are not employees of the office but who serve as
15 contracted counsel pursuant to the Family Representation and
16 Advocacy Act;

17 (13) formulate a fee schedule for other
18 contract staff who are not employees of the office but who
19 serve clients pursuant to the Family Representation and
20 Advocacy Act;

21 (14) establish a grievance procedure for
22 clients represented by a staff attorney, contract attorney or
23 served by office or contract staff;

24 (15) certify contracts and expenditures for
25 litigation expenses, including contracts and expenditures for

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1 experts, investigators, witnesses and attorney contracts; and
2 (16) perform other duties as set forth by the
3 commission and consistent with federal and state law.

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