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SENATE MEMORIAL 92

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Antoinette Sedillo-Lopez

A MEMORIAL

REQUESTING THE NEW MEXICO COALITION AGAINST DOMESTIC VIOLENCE TO CONVENE A TASK FORCE TO MAKE RECOMMENDATIONS FOR POLICY AND LEGISLATIVE CHANGES TO IMPROVE THE SAFETY OF CHILDREN WHO ARE THE SUBJECT OF CUSTODY DISPUTES WHEN THERE IS EVIDENCE OF DOMESTIC VIOLENCE.

WHEREAS, nationally, and in New Mexico, more than one in three women will experience domestic violence in her lifetime, and one in seven men will experience domestic violence in his lifetime; and

WHEREAS, the rates of domestic violence are at least as high among gay and lesbian intimate partners, but rates of reporting to law enforcement or of seeking services are very low and not specifically tracked; and

WHEREAS, in New Mexico, thirty percent of all reported

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1 domestic violence incidents involve at least one child who is a
2 witness to the violence; and

3 WHEREAS, New Mexico is one of only eight states that
4 presumes that joint legal custody is in the best interest of
5 the child in every case; and

6 WHEREAS, a finding of domestic violence is a factor to
7 consider to rebut the presumption of joint legal custody being
8 in the best interest of the child; and

9 WHEREAS, the national council of juvenile and family court
10 judges recommends that courts consider the safety and well-
11 being of the child and the abused parent above all other best
12 interest factors in disputed custody cases where there has been
13 a finding of abuse by one parent or the other; and

14 WHEREAS, there is a national trend to eliminate
15 presumptions and preferences in favor of broad judicial
16 discretion applied with close attention to the facts of each
17 case; and

18 WHEREAS, a 2010 department of justice study on the use of
19 court-appointed expert witnesses in custody cases involving
20 evidence of domestic violence found that the facts of the case
21 have less influence on the final custody and visitation
22 arrangements than the custody evaluator's understanding of
23 domestic violence, and, as a result, when a custody case ends
24 up in court, the fate of parents and children most often lies
25 in the hands of the evaluator; and

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1 WHEREAS, in disputed custody cases, New Mexico judges
2 routinely appoint experts to evaluate the child and the parents
3 to assist the court, but do not require those experts to meet
4 the legal standard for rendering an expert opinion and do not
5 require evaluators to have any specialized training or
6 knowledge of the dynamics of domestic violence; and

7 WHEREAS, national research shows that judges follow the
8 recommendations of evaluators ninety percent of the time; and

9 WHEREAS, New Mexico law provides an option for mediation
10 of child custody disputes and permits courts to order mediation
11 but does not require mediators to be trained about the dynamics
12 of domestic violence or to screen for domestic violence;

13 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE
14 OF NEW MEXICO that the New Mexico coalition against domestic
15 violence be requested to create a task force to study the
16 relationship between allegations of domestic violence in
17 contested child custody cases and the safety and well-being of
18 children in those cases; and

19 BE IT FURTHER RESOLVED that the New Mexico coalition
20 against domestic violence task force include representatives
21 from the following:

22 A. the coalition to stop violence against Native
23 women;

24 B. the city of Santa Fe coordinated community
25 response council;

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1 C. the university of New Mexico school of law;

2 D. a legal service provider with expertise in
3 family law and domestic violence;

4 E. a representative from the administrative office
5 of the courts with expertise in domestic violence;

6 F. a representative of the family law section of
7 the state bar of New Mexico;

8 G. a representative of the children, youth and
9 families department;

10 H. a representative of the New Mexico commission on
11 access to justice; and

12 I. representatives from a diverse array of
13 community-based organizations that have clients, including
14 immigrants, who have had experience in contested custody cases
15 in which domestic violence was an issue; and

16 BE IT FURTHER RESOLVED that the New Mexico coalition
17 against domestic violence task force report its findings and
18 recommendations of that study to the appropriate interim
19 legislative committees on or before December 1, 2019; and

20 BE IT FURTHER RESOLVED that copies of this memorial be
21 transmitted to the governor, the executive director of the New
22 Mexico coalition against domestic violence, the executive
23 director of the coalition to stop violence against Native
24 women, the coordinator of the city of Santa Fe coordinated
25 community response council, the dean of the university of New

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1 Mexico school of law, the director of the administrative office
2 of the courts, the president of the state bar of New Mexico,
3 the secretary of children, youth and families and the co-chairs
4 of the New Mexico commission on access to justice.

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