

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 46

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

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

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

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

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

A. "at risk of being placed" means conditions
within a child's family may require the child be removed from
the custody of a parent, custodian or guardian and placed in
the legal custody of the children, youth and families
department;

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1 B. "client" means:

2 (1) an eligible adult pursuant to the
3 Fostering Connections Act;

4 (2) a child who is, or is at risk of, being
5 placed in the legal custody of the children, youth and families
6 department; or

7 (3) a parent, custodian or guardian of a child
8 who is, or is at risk of, being placed in the legal custody of
9 the children, youth and families department;

10 C. "commission" means the family representation and
11 advocacy commission that provides oversight of the office of
12 family representation and advocacy;

13 D. "director" means the director of the office of
14 family representation and advocacy; and

15 E. "office" means the office of family
16 representation and advocacy.

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

18 A. The "office of family representation and
19 advocacy" is created as an adjunct agency pursuant to Section
20 9-1-5 NMSA 1978 and shall be overseen by the commission.

21 B. The office shall:

22 (1) work closely with the children, youth and
23 families department to leverage federal funding pursuant to
24 Title IV-E of the federal Social Security Act;

25 (2) appoint, compensate, evaluate and retain

1 attorneys and other staff in a manner that provides for the
2 highest quality of legal representation for eligible adults
3 under the Fostering Connections Act and for children and
4 parents, custodians or guardians whose children are, or are at
5 risk of being placed, in the legal custody of the children,
6 youth and families department;

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

9 (4) provide zealous representation of all
10 clients; and

11 (5) ensure that clients are provided with due
12 process and procedural fairness.

13 SECTION 4. [NEW MATERIAL] DUTY OF DIRECTOR TO ESTABLISH
14 APPELLATE DIVISION--DUTY OF APPELLATE DIVISION.--

15 A. The director shall establish an appellate
16 division within the office. The appellate division shall be
17 led by a chief appellate attorney.

18 B. The appellate division shall assist the director
19 by providing representation before the court of appeals and the
20 supreme court in appellate proceedings involving persons
21 represented pursuant to the Family Representation and Advocacy
22 Act.

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

25 A. The director shall establish at least five

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1 regional offices that align with the five regional offices of
2 the children, youth and families department to accommodate all
3 judicial districts that exist within the five regions. One
4 regional office shall be located each in the northwest,
5 northeast, southwest, southeast and the Bernalillo county
6 metropolitan area.

7 B. The director shall appoint a regional manager in
8 each region. The regional manager shall administer the
9 operation of the region and shall serve at the pleasure of the
10 director. Each regional manager shall reside in this state and
11 shall be an attorney licensed to practice law in the highest
12 courts of the state.

13 SECTION 6. [NEW MATERIAL] FAMILY REPRESENTATION AND
14 ADVOCACY COMMISSION--MEMBERSHIP--TERMS--REMOVAL.--

15 A. The "family representation and advocacy
16 commission" is created.

17 B. The commission consists of thirteen members,
18 including:

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

22 (2) the director of the administrative office
23 of the courts' court improvement project, or the director's
24 designee;

25 (3) the dean of the New Mexico state

1 university school of social work or the dean of New Mexico
2 highlands university school of social work, or the dean's
3 designee, in alternating terms;

4 (4) three members appointed by the governor
5 who demonstrate a commitment to high-quality legal
6 representation or to working with and advocating for the
7 population served by the office;

8 (5) five members appointed by the chief
9 justice of the supreme court, including:

10 (a) two members who either served as
11 former children's court judges or attorneys in the child
12 welfare system; and

13 (b) three members, including: 1) a
14 youth with lived experience in the legal custody of the
15 children, youth and families department; 2) a parent with lived
16 experience having one or more children in the legal custody of
17 the children, youth and families department; and 3) a member
18 with lived experience with the children, youth and families
19 department or another child welfare agency as a youth, a parent
20 or both;

21 (6) one member appointed by the speaker of the
22 house of representatives; and

23 (7) one member appointed by the president pro
24 tempore of the senate.

25 C. Initial appointments to the commission shall be

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1 made no later than September 30, 2022. The director of the
2 university of New Mexico school of law's Corinne Wolfe center
3 for child and family justice and the director of the
4 administrative office of the courts' court improvement project
5 shall serve as permanent members. Initial terms of members
6 appointed by the speaker of the house of representatives and
7 the president pro tempore of the senate shall be for two years.
8 Initial terms of members appointed by the governor, the chief
9 justice of the supreme court and the dean of a school of social
10 work shall be for three years.

11 D. Subsequent terms for appointed members shall be
12 for four years. Appointed commission members shall not serve
13 more than two consecutive terms. An appointed commission
14 member shall serve until the member's successor has been
15 appointed and qualified. The commission shall fill a vacancy
16 for the remainder of the unexpired term pursuant to Subsection
17 B of this section.

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

20 F. If a member's professional status changes in a
21 way that renders the member ineligible pursuant to the
22 provisions of the Family Representation and Advocacy Act, the
23 member shall resign immediately.

24 G. Members of the commission shall be entitled to
25 compensation pursuant to the provisions of the Per Diem and

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1 Mileage Act and shall receive no other perquisite, compensation
2 or allowance.

3 SECTION 7. [NEW MATERIAL] FAMILY REPRESENTATION AND
4 ADVOCACY COMMISSION--MEMBER QUALIFICATIONS.--

5 A. A member of the commission shall:

6 (1) possess significant experience in the
7 representation of children, youth, parents, custodians or
8 guardians in abuse and neglect proceedings;

9 (2) possess significant experience with the
10 child welfare system as a parent, custodian, guardian or former
11 foster youth; or

12 (3) demonstrate a commitment to high-quality
13 legal representation or to working with and advocating for the
14 population served by the office.

15 B. The following persons shall not be appointed to
16 serve on the commission:

17 (1) current employees of the children, youth
18 and families department;

19 (2) current employees of the office;

20 (3) current judges, judicial officials or
21 their employees; and

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

24 SECTION 8. [NEW MATERIAL] FAMILY REPRESENTATION AND
25 ADVOCACY COMMISSION--ORGANIZATION--MEETINGS.--

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1 A. The commission shall hold its first meeting no
2 later than thirty days after it has completed the appointment
3 process and shall elect a chair at that meeting. Thereafter,
4 the commission shall meet at least four times a year, as
5 determined by a majority of commission members. Meetings shall
6 be held at the call of the chair or director or at the request
7 of four commission members.

8 B. The commission shall appoint a director no later
9 than December 31, 2022.

10 C. A majority of commission members constitutes a
11 quorum for the transaction of business, and an action by the
12 commission shall not be valid unless seven or more members
13 concur.

14 D. The commission may adopt rules and shall keep a
15 record of its proceedings.

16 E. A commission member may select a designee to
17 serve in the member's place no more than once per year.

18 SECTION 9. [NEW MATERIAL] FAMILY REPRESENTATION AND
19 ADVOCACY COMMISSION--POWERS AND DUTIES--RESTRICTION ON
20 INDIVIDUAL MEMBERS.--

21 A. The commission shall exercise independent
22 oversight of the office of family representation and advocacy
23 to review and approve standards and provide guidance and
24 support to the director that:

- 25 (1) promote positive outcomes for families;

1 (2) affirm, respect and support the diversity
2 of families in this state;

3 (3) promote due process and procedural
4 fairness;

5 (4) are consistent with performance standards
6 and legal ethics; and

7 (5) comply with state and federal law.

8 B. The commission shall review and approve fair and
9 consistent policies for the operation of the office of family
10 representation and advocacy and the provision of services to
11 eligible adults under the Fostering Connections Act and to
12 children and parents, custodians or guardians whose children
13 are, or are at risk of being placed, in the legal custody of
14 the children, youth and families department.

15 C. A member of the commission shall not interfere
16 with the discretion, professional judgment or advocacy of an
17 appointed attorney, contract attorney, staff attorney, contract
18 employee or office employee in the representation and advocacy
19 of a client pursuant to the Family Representation and Advocacy
20 Act.

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

23 A. The headquarters of the office shall be located
24 in the Bernalillo county metropolitan region.

25 B. All salaries and other expenses of the office

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1 shall be paid upon warrants drawn by the secretary of finance
2 and administration, supported by vouchers signed by the
3 director or the director's authorized representative and in
4 accordance with budgets approved by the state budget division
5 of the department of finance and administration.

6 SECTION 11. [NEW MATERIAL] OFFICE OF FAMILY
7 REPRESENTATION AND ADVOCACY--GIFTS, GRANTS AND DONATIONS.--On
8 behalf of the state, the office may receive gifts, grants,
9 donations or bequests from any source to be used in carrying
10 out the purposes of the Family Representation and Advocacy Act.
11 Gifts, grants, donations or bequests from a person who has any
12 matter currently being handled by the office, or from a person
13 within three degrees of consanguinity with a person who has any
14 matter currently being handled by the office, shall not be
15 accepted.

16 SECTION 12. [NEW MATERIAL] DIRECTOR--APPOINTMENT--
17 QUALIFICATIONS--REMOVAL.--

18 A. The director is the administrative head of the
19 office. The commission shall appoint a director for a term of
20 four years upon approval of two-thirds of its members. The
21 commission may reappoint a director for subsequent terms. A
22 vacancy in the office of director shall be filled by
23 appointment of the commission.

24 B. The commission shall appoint as director an
25 attorney with the following qualifications:

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

3 (2) at least five years of experience in the
4 field of representation of children or adults in abuse and
5 neglect cases in a practicing attorney, management, supervisory
6 or policymaking position or equivalent experience as determined
7 by the commission; and

8 (3) clearly demonstrated management or
9 executive experience.

10 C. The director may be removed by the commission
11 upon approval of two-thirds of commission members; provided
12 that no removal shall occur without notice and an opportunity
13 for a hearing.

14 SECTION 13. [NEW MATERIAL] DIRECTOR--GENERAL DUTIES AND
15 POWERS.--

16 A. The director is responsible to the commission
17 for the operation of the office. The director shall manage all
18 operations of the office and shall:

19 (1) administer and carry out the provisions of
20 the Family Representation and Advocacy Act;

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

23 (3) oversee funding, including federal
24 funding;

25 (4) administer and supervise contracts for

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1 attorneys and other employees; and

2 (5) represent and advocate for the office and
3 its clients.

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

7 (1) set standards relating to:

8 (a) the minimum experience, training and
9 qualifications for contract and staff attorneys for child
10 welfare cases;

11 (b) monitoring and evaluating contract
12 and staff attorneys and other contract and office staff,
13 including attorneys appointed to cases to resolve conflicts of
14 interest;

15 (c) ethically responsible caseloads and
16 workloads, including load monitoring protocols for staff
17 attorneys, contract attorneys, office staff and contract staff;
18 and

19 (d) the competent and efficient
20 representation of clients whose cases present conflicts of
21 interest;

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

24 (3) delegate authority to subordinates as the
25 director deems necessary and appropriate;

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1 (4) employ and fix the compensation of persons
2 necessary to discharge the director's duties and enter into
3 contracts with private attorneys and law firms as necessary to
4 carry out the provisions of the Family Representation and
5 Advocacy Act;

6 (5) organize the office into units as the
7 director deems necessary and appropriate to carry out the
8 director's duties;

9 (6) develop and annually update a strategic
10 plan with measurable goals and metrics;

11 (7) conduct research and studies that will
12 improve the operation of the office and the administration of
13 the Family Representation and Advocacy Act;

14 (8) provide courses of instruction and
15 practical training for employees of the office that will
16 improve the operation of the office and the administration of
17 the Family Representation and Advocacy Act;

18 (9) purchase or lease property and lease real
19 property for use of the office;

20 (10) maintain records and statistical data
21 that reflect the operation and administration of the office,
22 including a system that allows the office to:

23 (a) collect and analyze data on outcomes
24 for children and families;

25 (b) maintain client confidentiality of

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1 information;

2 (c) evaluate the effectiveness of the
3 office's programs and practices; and

4 (d) inform and guide continuous quality
5 improvement;

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

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

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

16 (14) establish a grievance procedure for
17 clients represented by a staff attorney or contract attorney or
18 served by office or contract staff;

19 (15) certify contracts and expenditures for
20 litigation expenses, including contracts and expenditures for
21 experts, investigators, witnesses and attorney contracts; and

22 (16) perform other duties as set forth by the
23 commission and consistent with federal and state law.