

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 127

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

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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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 OVERSIGHT 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".

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

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

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

C. "office" means the office of family representation and advocacy.

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

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

B. The office shall:

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

(2) appoint, compensate, evaluate and retain attorneys and other staff in a manner that provides for the highest quality of legal representation for eligible adults under the Fostering Connections Act; and for children and parents, custodians or guardians whose children are, or are at risk of, being placed in the legal custody of the children, youth and families department;

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

(4) provide zealous representation of all

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clients;

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

(6) provide positive outcomes for children and their families, including decreased time to permanency and swift resolution of cases.

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

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

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

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

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

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

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

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

B. The commission consists of thirteen members, including:

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

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

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

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

(5) five members appointed by the chief

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justice of the New Mexico supreme court, including:

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

(b) three members, including: 1) a youth with lived experience in the legal custody of the children, youth and families department; 2) a parent with lived experience having one or more children in the legal custody of the children, youth and families department; and 3) a member with lived experience with the children, youth and families department or another child welfare agency as a youth, parent or both SFC→; provided that to assure that the commission reflects adequate representation of the geographic diversity of the state, the chief justice of the New Mexico supreme court shall appoint members from different geographic regions of New Mexico←SFC ;

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

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

C. Initial appointments to the commission shall be

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

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

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

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

G. Members of the commission shall be entitled to

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compensation pursuant to the provisions of the Per Diem and Mileage Act and shall not receive other perquisite, compensation or allowance.

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

A. A member of the commission shall:

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

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

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

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

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

(2) current employees of the office;

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

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

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

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

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

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

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

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

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

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

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

- (1) promotes positive outcomes for families;
- (2) affirms, respects and supports the diversity of families in this state;
- (3) promotes due process and procedural fairness;
- (4) is consistent with performance standards and legal ethics; and
- (5) complies with state and federal law.

B. The commission shall review and approve fair and consistent policies for the operation of the office and the provision of services to eligible adults under the Fostering Connections Act; and to children and parents, custodians or guardians whose children are, or are at risk of, being placed in the legal custody of the children, youth and families department.

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

**SECTION 10. [NEW MATERIAL] OFFICE OF FAMILY**

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REPRESENTATION AND ADVOCACY--ADMINISTRATION--FINANCE.--

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

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

SECTION 11. [NEW MATERIAL] OFFICE OF FAMILY

REPRESENTATION AND ADVOCACY--GIFTS, GRANTS AND DONATIONS.--On behalf of the state, the office may receive gifts, grants, donations or bequests from any source to be used in carrying out the purposes of the Family Representation and Advocacy Act. Gifts, grants, donations or bequests from a person who has any matter currently being handled by the office, or from a person within three degrees of consanguinity with a person who has any matter currently being handled by the office, shall not be accepted.

SECTION 12. [NEW MATERIAL] DIRECTOR--APPOINTMENT--

QUALIFICATIONS--REMOVAL.--

A. The director shall be the administrative head of the office. The commission shall appoint a director for a term of four years upon approval of two-thirds of its members. The commission may reappoint a director for subsequent terms. A

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vacancy in the office of director shall be filled by appointment of the commission.

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

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

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

(3) clearly demonstrated management or executive experience.

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

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

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

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

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

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(3) oversee funding, including federal funding;

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

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

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

(1) set standards relating to:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) collect and analyze data on outcomes

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for children and families;

(b) maintain client confidentiality of information;

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

(d) inform and guide continuous quality improvement;

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

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

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

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

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

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

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