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SENATE BILL

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

INTRODUCED BY

Linda M. Lopez

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".

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

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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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