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HOUSE BILL 46

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

INTRODUCED BY

Gail Chasey and 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 children, youth and
7 families department to leverage federal funding pursuant to
8 Title IV-E of the federal 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 eligible adults
12 under the Fostering Connections Act and for children and
13 parents, custodians or guardians whose children are, or are at
14 risk of being placed, in the legal custody of the children,
15 youth and families department;

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

18 (4) provide zealous representation of all
19 clients;

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

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

25 SECTION 4. [NEW MATERIAL] DUTY OF DIRECTOR TO ESTABLISH

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1 APPELLATE DIVISION--DUTY OF APPELLATE DIVISION.--

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

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

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

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

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

25 SECTION 6. [NEW MATERIAL] FAMILY REPRESENTATION AND

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1 ADVOCACY OVERSIGHT COMMISSION--MEMBERSHIP--TERMS--REMOVAL.--

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

4 B. The commission consists of thirteen members,
5 including:

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

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

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

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

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

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

23 (b) three members, including: 1) a
24 youth with lived experience in the legal custody of the
25 children, youth and families department; 2) a parent with lived

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1 experience having one or more children in the legal custody of
2 the children, youth and families department; and 3) a member
3 with lived experience with the children, youth and families
4 department or another child welfare agency as a youth, parent
5 or both;

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

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

14 C. Initial appointments to the commission shall be
15 made no later than September 30, 2022. If a position remains
16 vacant on September 30, 2022, the supreme court shall fill the
17 vacancy. The director of the university of New Mexico school
18 of law's Corinne Wolfe center for child and family justice and
19 the director of the administrative office of the courts' court
20 improvement project shall serve as permanent members. Initial
21 terms of members appointed by the speaker of the house of
22 representatives, the president pro tempore of the senate and
23 the governor shall be for two years. Initial terms of members
24 appointed by the chief justice of the supreme court and the
25 dean of a school of social work shall be for three years.

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

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

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

14 G. Members of the commission shall be entitled to
15 compensation pursuant to the provisions of the Per Diem and
16 Mileage Act and shall receive no other perquisite, compensation
17 or allowance.

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

20 A. A member of the commission shall:

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

24 (2) possess significant experience with the
25 child welfare system as a parent, custodian, guardian or former

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1 foster youth; or

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

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

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

9 (2) current employees of the office;

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

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

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

16 A. 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 B. The commission shall appoint a permanent
24 director no later than December 31, 2023.

25 C. 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 D. The commission may adopt rules and shall keep a
5 record of its proceedings.

6 E. 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) promote positive outcomes for families;
15 (2) affirm, respect and support the diversity
16 of families in this state;
17 (3) promote due process and procedural
18 fairness;
19 (4) are consistent with performance standards
20 and legal ethics; and
21 (5) comply 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 eligible adults under the Fostering
25 Connections Act and to children and parents, custodians or

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1 guardians whose children are, or are at risk of being placed,
2 in the legal custody of the children, youth and families
3 department.

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

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

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

14 B. All salaries and other expenses of the office
15 shall be paid upon warrants drawn by the secretary of finance
16 and administration, supported by vouchers signed by the
17 director or the director's authorized representative and in
18 accordance with budgets approved by the state budget division
19 of the department of finance and administration.

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

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1 matter currently being handled by the office, or from a person
2 within three degrees of consanguinity with a person who has any
3 matter currently being handled by the office, shall not be
4 accepted.

5 SECTION 12. [NEW MATERIAL] DIRECTOR--APPOINTMENT--
6 QUALIFICATIONS--REMOVAL.--

7 A. The director shall be the administrative head of
8 the office. The commission shall appoint a director for a term
9 of four years upon approval of two-thirds of its members. The
10 commission may reappoint a director for subsequent terms. A
11 vacancy in the office of director shall be filled by
12 appointment of the commission.

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

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

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

22 (3) clearly demonstrated management or
23 executive experience.

24 C. The director may be removed by the commission;
25 provided that no removal shall occur without notice and an

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1 opportunity for a hearing.

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

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

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

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

11 (3) oversee funding, including federal
12 funding;

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

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

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

20 (1) set standards relating to:

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

24 (b) monitoring and evaluating contract
25 and staff attorneys and other contract and office staff,

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1 including attorneys appointed to cases to resolve conflicts of
2 interest;

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

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

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

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

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

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

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

24 (7) conduct research and studies that will
25 improve the operation of the office and the administration of

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1 the Family Representation and Advocacy Act;

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

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

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

11 (a) collect and analyze data on outcomes
12 for children and families;

13 (b) maintain client confidentiality of
14 information;

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

17 (d) inform and guide continuous quality
18 improvement;

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

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

25 (13) formulate a fee schedule for other

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1 contract staff who are not employees of the office but who
2 serve clients pursuant to the Family Representation and
3 Advocacy Act;

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

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

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