

SENATE JOINT MEMORIAL 10

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

INTRODUCED BY

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

A JOINT MEMORIAL

REQUESTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONVENE THE FAMILY REPRESENTATION TASK FORCE MADE UP OF EXPERTS ON CHILDREN'S LAW AND THE NEW MEXICO LEGAL SYSTEM, TO RECOMMEND MODELS FOR LEGAL REPRESENTATION OF CHILDREN AND PARENTS IN CHILDREN'S COURT PROCEEDINGS ON ABUSE AND NEGLECT.

WHEREAS, New Mexico's children's courts receive over six hundred new child abuse and neglect petitions every year; and

WHEREAS, New Mexico's children's courts have about two thousand pending cases of child abuse and neglect annually; and

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WHEREAS, New Mexico courts are statutorily required to provide legal representation to all children and parents, guardians or custodians involved in abuse and neglect cases; and

WHEREAS, child abuse and neglect cases involve one of the most basic and fundamental rights: the right to the companionship and care of one's family; and

WHEREAS, child abuse and neglect cases result in significant trauma and have the potential to permanently sever the parent-child relationship; and

WHEREAS, high-quality legal representation for children and families is important to protect due process rights and procedural fairness; and

WHEREAS, high-quality legal representation improves judicial decision making by providing the court with accurate, timely and complete information about the children and parties and provides a platform for the voices of children and parents; and

WHEREAS, high-quality legal representation leads to better long-term outcomes for children and their families in child welfare matters; and

WHEREAS, timely placement permanency for children leads to reduced costs to the state in terms of foster care support payments, case worker time and court time, as well as resources and services for children and families; and

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WHEREAS, child welfare law is a highly specialized and complex area of law; and

WHEREAS, the United States department of health and human services' administration for children and families released an information memorandum in 2017 focused solely on the importance of quality legal representation in abuse and neglect cases; and

WHEREAS, national research shows that improved representation is associated with better child welfare outcomes, both in urban and rural areas, including: an increased rate and speed of placement permanency; fewer foster care placements; more efficient case processing; cost-effectiveness; and court and client satisfaction; and

WHEREAS, New Mexico struggles to provide adequate compensation and infrastructure to ensure proper oversight, recruitment, retention, auditing, training, evaluation and support to its abuse and neglect contract attorneys; and

WHEREAS, poor-quality legal representation can lead to longer stays in foster care, longer case processing times, infrequent and less meaningful client interaction and less vigorously developed case resolutions; and

WHEREAS, national research provides the following components of a structure that promotes quality legal representation for children and families:

- A. clearly defined roles and expectations;
- B. reasonable caseloads;

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- C. fair compensation and benefits;
- D. high standards of practice;
- E. specialized child welfare law training;
- F. effective supervision of legal personnel;
- G. client feedback mechanisms; and
- H. access to an interdisciplinary model of representation; and

WHEREAS, there is a need to study and provide recommendations on effective abuse and neglect case representation structures that are conducive to protecting the rights of New Mexico children and parents;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the administrative office of the courts be requested to convene the "family representation task force", made up of experts on children's law and the New Mexico legal system, to recommend models for legal representation of children and parents in children's court proceedings on abuse and neglect and to improve outcomes for children and parents served by New Mexico's children's legal system; and

BE IT FURTHER RESOLVED that the family representation task force be requested to recommend strategies for ensuring that parties in children's court cases are prepared to proceed in child welfare matters and to enable courts to resolve children's court proceedings as justly, efficiently and quickly as possible; and

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BE IT FURTHER RESOLVED that the administrative office of the courts be requested to invite the following individuals to participate on the family representation task force:

A. a member of the senate, appointed by the president pro tempore of the senate;

B. a member of the house of representatives, appointed by the speaker of the house of representatives;

C. the chief children's court attorney of the children, youth and families department;

D. court personnel, appointed by the chief justice of the supreme court as follows:

(1) two children's court judges;

(2) three attorneys who practice, or formerly practiced, in the child welfare system in the following capacities:

(a) one respondent's attorney;

(b) one guardian ad litem; and

(c) one youth's attorney;

E. one member of the children's court improvement commission, appointed by the co-chairs of the commission;

F. the chief public defender, or the chief public defender's designee;

G. the director of the administrative office of the courts, or the director's designee;

H. the executive director of New Mexico legal aid,

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or the executive director's designee;

I. the director of the legislative finance committee, or the director's designee;

J. the director of the American bar association's center on children and the law;

SRC→K. a representative of the national council of juvenile and family court judges;←SRC

SRC→~~K.~~ L.←SRC a former foster youth; SRC→and←SRC

SRC→M. a permanency planning worker from the children, youth and families department;

N. the children, youth and families department's coordinator for the federal Family First Prevention Services Act; and←SRC

SRC→~~L.~~ O.←SRC a parent who has previously been involved in the state's child welfare system; and

BE IT FURTHER RESOLVED that the family representation task force be requested to consider the feasibility, costs and benefits of creating a system for providing legal representation to parties in child welfare matters, including:

A. financial considerations in establishing and maintaining a child welfare legal representation agency;

B. proposed governance and administrative functions for a child welfare legal representation agency;

C. how a child welfare legal representation system could ensure attorney accountability, oversight and evaluation;

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D. how to create a structure in a child welfare legal representation system for providing training and litigation support to parties and legal counsel;

E. the extent to which the child welfare legal representation system could provide legislative advocacy;

F. identification of potential conflicts of interest between parties and a child welfare legal representation system;

G. the provision of legal representation and litigation support for child welfare matters on appeal; and

H. identification of costs associated with moving a child welfare legal representation system into an existing agency or creating a new entity or entities, considering the legal, practical and philosophical considerations of such a move; and

BE IT FURTHER RESOLVED that, if the family representation task force recommends creation of a new child welfare legal representation agency, the task force be requested to make recommendations on the establishment of:

- A. trial and appellate standards;
- B. relevant, accessible and role-specific training;
- C. a mentoring and retention program and opportunities for law students in that mentoring and retention program;
- D. a compensation structure that achieves parity

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and adequate representation;

E. improvements in and establishment of accessibility to experts, social workers, paralegals and administrative supports;

F. a formal complaint process; and

G. strategies for personnel recruitment, retention, support and resources in rural districts; and

BE IT FURTHER RESOLVED that in order to recommend changes to the legislature, the family representation task force be requested to conduct surveys of other states to identify models of effective representation and funding that lead to improved outcomes for children and families; and

BE IT FURTHER RESOLVED that the family representation task force be requested to produce a report to the legislature and any relevant interim committees prior to the 2021 legislative session; and

BE IT FURTHER RESOLVED that the family representation task force be requested to include the information requested in this joint memorial in the report and also identify in the report:

A. statutory changes needed to support proposed models of legal representation;

B. an identification of the obstacles in counties statewide to providing children and parents with legal representation in children's court proceedings; and

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C. an identification of optimal attorney caseload levels and other resources necessary to provide appropriate legal representation in children's court proceedings statewide; and

BE IT FURTHER RESOLVED that the chief justice of the New Mexico supreme court be requested to appoint a chair of the family representation task force; and

BE IT FURTHER RESOLVED that the administrative office of the courts be requested to provide staff support to the family representation task force; and

BE IT FURTHER RESOLVED that the family representation task force be requested to submit a report that includes the recommendations of the task force, including recommendations for legislation, to the appropriate interim committees of the legislature by July 15, 2020; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the president pro tempore of the senate; the speaker of the house of representatives; the secretary of children, youth and families; the chief justice of the New Mexico supreme court; the chief public defender; the director of the administrative office of the courts; the director of the legislative finance committee; the executive director of New Mexico legal aid; and the president of the American bar association.