

HOUSE FLOOR SUBSTITUTE FOR
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 9-1-6 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; and

25 (2) appoint, compensate, evaluate and retain

1 attorneys and other staff to provide legal representation for
 2 eligible adults under the Fostering Connections Act and for
 3 children and parents, custodians or guardians whose children
 4 are, or are at risk of being placed, in the legal custody of
 5 the children, youth and families department.

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

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

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

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

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

25 B. The director shall appoint a regional manager in

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1 each region. The regional manager shall administer the
2 operation of the region and shall serve at the pleasure of the
3 director. Each regional manager shall reside in this state and
4 shall be an attorney licensed to practice law in the highest
5 courts of the state.

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

8 A. The "family representation and advocacy
9 commission" is created.

10 B. The commission consists of thirteen members,
11 including:

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

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

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

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

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

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

6 (b) three members, including: 1) a
7 youth with lived experience in the legal custody of the
8 children, youth and families department; 2) a parent with lived
9 experience having one or more children in the legal custody of
10 the children, youth and families department; and 3) a member
11 with lived experience with the children, youth and families
12 department or another child welfare agency as a youth, a parent
13 or both;

14 (6) one member appointed by the speaker of the
15 house of representatives; and

16 (7) one member appointed by the president pro
17 tempore of the senate.

18 C. Initial appointments to the commission shall be
19 made no later than September 30, 2022. The director of the
20 university of New Mexico school of law's Corinne Wolfe center
21 for child and family justice and the director of the
22 administrative office of the courts' court improvement project
23 shall serve as permanent members. Initial terms of members
24 appointed by the speaker of the house of representatives and
25 the president pro tempore of the senate shall be for two years.

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1 Initial terms of members appointed by the governor, the chief
2 justice of the supreme court and the dean of a school of social
3 work shall be for three years.

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

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

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

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

21 SECTION 7. [NEW MATERIAL] FAMILY REPRESENTATION AND
22 ADVOCACY COMMISSION--MEMBER QUALIFICATIONS.--

23 A. A member of the commission shall:

24 (1) possess significant experience in the
25 representation of children, youth, parents, custodians or

1 guardians in abuse and neglect proceedings;

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

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

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

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

12 (2) current employees of the office;

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

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

17 SECTION 8. [NEW MATERIAL] FAMILY REPRESENTATION AND
18 ADVOCACY COMMISSION--ORGANIZATION--MEETINGS.--

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

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1 B. The commission shall appoint a director no later
2 than December 31, 2022.

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

7 D. The commission may adopt rules and shall keep a
8 record of its proceedings.

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

11 SECTION 9. [NEW MATERIAL] FAMILY REPRESENTATION AND
12 ADVOCACY COMMISSION--POWERS AND DUTIES--RESTRICTION ON
13 INDIVIDUAL MEMBERS.--

14 A. The commission shall exercise independent
15 oversight of the office of family representation and advocacy
16 to review and approve standards and provide guidance and
17 support to the director.

18 B. The commission shall review and approve fair and
19 consistent policies for the operation of the office of family
20 representation and advocacy and the provision of services to
21 eligible adults under the Fostering Connections Act and to
22 children and parents, custodians or guardians whose children
23 are, or are at risk of being placed, in the legal custody of
24 the children, youth and families department.

25 C. A member of the commission shall not interfere

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1 with the discretion, professional judgment or advocacy of an
 2 appointed attorney, contract attorney, staff attorney, contract
 3 employee or office employee in the representation and advocacy
 4 of a client pursuant to the Family Representation and Advocacy
 5 Act.

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

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

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

16 SECTION 11. [NEW MATERIAL] OFFICE OF FAMILY
 17 REPRESENTATION AND ADVOCACY--GIFTS, GRANTS AND DONATIONS.--On
 18 behalf of the state, the office may receive gifts, grants,
 19 donations or bequests from any source to be used in carrying
 20 out the purposes of the Family Representation and Advocacy Act.
 21 Gifts, grants, donations or bequests from a person who has any
 22 matter currently being handled by the office, or from a person
 23 within three degrees of consanguinity with a person who has any
 24 matter currently being handled by the office, shall not be
 25 accepted.

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1 SECTION 12. [NEW MATERIAL] DIRECTOR--APPOINTMENT--
2 QUALIFICATIONS--REMOVAL.--

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

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

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

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

18 (3) clearly demonstrated management or
19 executive experience.

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

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

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

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

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

8 (3) oversee funding, including federal
9 funding;

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

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

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

17 (1) set standards relating to:

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

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

25 (c) managing caseloads and workloads,

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1 including load monitoring protocols for staff attorneys,
2 contract attorneys, office staff and contract staff; and

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

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

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

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

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

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

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

23 (8) provide courses of instruction and
24 practical training for employees of the office 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 (9) purchase or lease property and lease real
3 property for use of the office;

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

7 (a) collect and analyze data on outcomes
8 for children and families;

9 (b) maintain client confidentiality of
10 information;

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

13 (d) inform and guide continuous quality
14 improvement;

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

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

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

25 (14) establish a grievance procedure for

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1 clients represented by a staff attorney or contract attorney or
2 served by office or contract staff;

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

6 (16) perform other duties as set forth by the
7 commission.