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SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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 federal 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 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 by March 30, 2023. If a position remains vacant on March
16 30, 2023, the supreme court shall fill the vacancy. The
17 director of the university of New Mexico school of law's
18 Corinne Wolfe center for child and family justice and the
19 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. No later than July 1, 2022, the chief justice of
17 the supreme court shall appoint an interim director to serve
18 until the commission appoints a director.

19 B. 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 C. The commission shall appoint a permanent
2 director no later than December 31, 2023.

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

9 F. 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 OVERSIGHT COMMISSION--POWERS AND DUTIES--RESTRICTION
13 ON INDIVIDUAL MEMBERS.--

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

- 17 (1) promote positive outcomes for families;
- 18 (2) affirm, respect and support the diversity
19 of families in this state;
- 20 (3) promote due process and procedural
21 fairness;
- 22 (4) are consistent with performance standards
23 and legal ethics; and
- 24 (5) comply with state and federal law.

25 B. The commission shall review and approve fair and

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1 consistent policies for the operation of the office and the
2 provision of services to eligible adults under the Fostering
3 Connections Act and to children and parents, custodians or
4 guardians whose children are, or are at risk of being placed,
5 in the legal custody of the children, youth and families
6 department.

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

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

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

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

23 SECTION 11. [NEW MATERIAL] OFFICE OF FAMILY
24 REPRESENTATION AND ADVOCACY--GIFTS, GRANTS AND DONATIONS.--On
25 behalf of the state, the office may receive gifts, grants,

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1 donations or bequests from any source to be used in carrying
2 out the purposes of the Family Representation and Advocacy Act.
3 Gifts, grants, donations or bequests from a person who has any
4 matter currently being handled by the office, or from a person
5 within three degrees of consanguinity with a person who has any
6 matter currently being handled by the office, shall not be
7 accepted.

8 SECTION 12. [NEW MATERIAL] DIRECTOR--APPOINTMENT--
9 QUALIFICATIONS--REMOVAL.--

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

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

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

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

25 (3) clearly demonstrated management or

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1 executive experience.

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

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

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

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

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

14 (3) oversee funding, including federal
15 funding;

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

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

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

23 (1) set standards relating to:

24 (a) the minimum experience, training and
25 qualifications for contract and staff attorneys for child

1 welfare cases;

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

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

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

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

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

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

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

25 (6) develop and annually update a strategic

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1 plan with measurable goals and metrics;

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

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

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

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

14 (a) collect and analyze data on outcomes
15 for children and families;

16 (b) maintain client confidentiality of
17 information;

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

20 (d) inform and guide continuous quality
21 improvement;

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

24 (12) formulate a fee schedule for attorneys or
25 law firms who are not employees of the office but who serve as

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1 contracted counsel pursuant to the Family Representation and
2 Advocacy Act;

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

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

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

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