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SENATE JOINT MEMORIAL 10

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

INTRODUCED BY

Linda M. Lopez and Jim R. Trujillo

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

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

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1 most basic and fundamental rights: the right to the
2 companionship and care of one's family; and

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

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

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

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

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

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

23 WHEREAS, the United States department of health and human
24 services' administration for children and families released an
25 information memorandum in 2017 focused solely on the importance

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1 of quality legal representation in abuse and neglect cases; and

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

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

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

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

- 19 A. clearly defined roles and expectations;
- 20 B. reasonable caseloads;
- 21 C. fair compensation and benefits;
- 22 D. high standards of practice;
- 23 E. specialized child welfare law training;
- 24 F. effective supervision of legal personnel;
- 25 G. client feedback mechanisms; and

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1 H. access to an interdisciplinary model of
2 representation; and

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

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

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

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

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

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

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

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

7 (1) two children's court judges;

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

11 (a) one respondent's attorney;

12 (b) one guardian ad litem; and

13 (c) one youth's attorney;

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

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

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

20 H. the executive director of New Mexico legal aid,
21 or the executive director's designee;

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

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

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1 K. a former foster youth; and

2 L. a parent who has previously been involved in the
3 state's child welfare system; and

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

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

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

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

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

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

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

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

24 H. identification of costs associated with moving a
25 child welfare legal representation system into an existing

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1 agency or creating a new entity or entities, considering the
2 legal, practical and philosophical considerations of such a
3 move; and

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

- 8 A. trial and appellate standards;
- 9 B. relevant, accessible and role-specific training;
- 10 C. a mentoring and retention program and
11 opportunities for law students in that mentoring and retention
12 program;
- 13 D. a compensation structure that achieves parity
14 and adequate representation;
- 15 E. improvements in and establishment of
16 accessibility to experts, social workers, paralegals and
17 administrative supports;
- 18 F. a formal complaint process; and
- 19 G. strategies for personnel recruitment, retention,
20 support and resources in rural districts; and

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

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

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

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

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

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

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

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

24 BE IT FURTHER RESOLVED that the family representation task
25 force be requested to submit a report that includes the

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1 recommendations of the task force, including recommendations
2 for legislation, to the appropriate interim committees of the
3 legislature by July 15, 2020; and

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