



New Mexico Supreme Court **FAMILY REPRESENTATION COMMISSION**

Why We Need

The Office of Family Representation and Advocacy (SB 127 & SJR 11)

Child abuse and neglect is a critical problem in New Mexico and nationally, with serious long-term consequences for everyone involved. Families find themselves in Children's Court, and children end up in foster care, often with strangers, and sometimes for long periods of time.

Thankfully, there are State laws requiring that every parent, youth and child in an abuse and neglect case be appointed an attorney before the first hearing and for the duration of the case. The idea is to get the best legal representation and advocacy possible to keep families together when we can, and to find other means to permanency if we cannot.

Sometimes that works well, and too often it does not. That is why we seek to create the Office of Family Representation and Advocacy. Consider the following:

- *Lucy is 17 years old and has been in foster care since she was 12. Her parents' rights were terminated when she was 14. She is currently living in a group home, but really wants a family of her own. Her Youth Attorney has never visited her or ever asked her what she wanted. Lucy will likely age out of the system at 18 with no lasting adult connections.*
- *Jorge is in foster care with Sarah who has been a foster parent for 15 years. Jorge's mom Janet regularly visits with Jorge in Sarah's home. Janet has done well on her treatment plan and is ready for Jorge to come home, but there is no hearing scheduled for three more months. Thankfully Sarah contacted Jorge's attorney who expedited the process; the hearing will be held in two weeks.*

We need to do better by these children and families.

There are too many inconsistencies and deficiencies in representation and advocacy that lead to children remaining in foster care for longer periods of time than necessary. This often creates lasting damage for children and their families.

We have a duty to provide the highest quality representation with attorneys who are specialized and dedicated to this work. We need to carefully manage, standardize, and monitor performance and outcomes.

With this legislation, we will create an independent agency called the Office of Family Representation and Advocacy. The Office will have an oversight Commission and budgetary independence and will:

- Create a highly qualified attorney workforce with reasonable caseloads and decent compensation
- Provide extensive training for all staff and institute quality control and performance monitoring
- Develop supports for attorneys to include mentors, paralegals, investigators and administrative staff
- Engage appellate attorneys and services
- Develop collaborative teams that include the attorney, a social worker or case manager, and a peer specialist with lived experience who will advocate for services and help children and families successfully access the resources they need to keep families together whenever possible

New Mexico needs to do more to secure positive outcomes for families. We need to affirm, respect, and support the diversity of New Mexico's families. We need to promote due process and procedural fairness. We need the Office of Family Representation and Advocacy leading the way.

SB127 creates the Office of Family Representation and Advocacy in statute and SJR 11 creates the approval to take a Constitutional Amendment to the voters to make the Office an independent agency.

How We Got Here

The Office of Family Representation and Advocacy

Currently, representation of children and families in abuse and neglect cases is provided by approximately 110 attorneys under contract with the Administrative Office of the Courts (AOC). At any point in time, these attorneys will be engaged in about 1500 cases that involve approximately 2400 children and 2100 parents, guardians or custodians. Many of these attorneys provide diligent representation and advocacy but others do not. The AOC has neither the staff or other resources to monitor these contracts. Over the last 20 years, a number of efforts have been launched to improve performance, primarily through the Children's Court Improvement Commission.

The most recent effort to address this issue began with an in-depth assessment of the quality of representation for families in child abuse and neglect cases. The study, conducted by the NM Supreme Court Children's Court Improvement Commission, found a number of issues including overall poor quality of representation, lack of caseload management, inadequate compensation, and lack of monitoring and oversight resulting in delays in permanency and hindrances to other positive outcomes for families.

In response, lawmakers passed Senate Joint Memorial 10 (2019) creating the Family Representation Task Force tasked with recommending new structural and practice models for providing high quality legal representation. The Task Force completed its work, recommending the creation of the Office of Family Representation and Advocacy, an autonomous entity that would allow for independent decision-making and oversight.

The Family Representation and Advocacy Act, and the accompanying Constitutional Amendment, were then drafted, modeled after the Law Office of the Public Defender legislation. The Act creates the Office of Family Representation and Advocacy in the Judiciary as well as an Oversight Commission. The Constitutional Amendment creates a concrete plan and time frame for complete independence of the Office.

The Office of Family Representation and Advocacy would reside in the Administrative Office of the Courts until the Constitutional Amendment is passed by the voters in November 2022. An Interim Director would be contracted by the Administrative Office of the Courts (AOC) to comprehensively restructure the current Court Appointed Attorney program in preparation for moving the program out of the AOC.

The Office of Family Representation and Advocacy will develop interdisciplinary legal team services. The model draws on best practices for providing high quality legal representation for participants in child abuse and neglect proceedings and included social workers, case managers, and peer advocates. New Mexico is in the forefront on this and our efforts are being closely watched and modeled in other states.

No appropriation is being requested at this time. In developing the Office of Family Representation and Advocacy, extensive cost-benefit analyses were conducted. When fully operational, it is expected to cost about \$17 million with about \$7 million in new funding eventually required. Annual benefits are estimated to range from \$5 million to almost \$12 million primarily derived from shorter lengths of stay in state custody.

These benefits will at minimum substantially offset costs and could result in net savings for the state over time. Additional cost savings, not monetized in the analysis, will result from reduced court, attorney and other legal costs as well as savings in Medicaid and other public programs. Equally, if not more important, the services to be provided by the Office of Family Representation and Advocacy will result in better outcomes for children, young people and families in the areas of safety, permanency, and well-being.

