

Good Afternoon Co Chair Pinto and Members of the Committee-

Thank you for allowing CYFD Protective Services to present to you today on the Indian Child Welfare Act. My name is Cynthia Chavers. I am the Federal Reporting Bureau Chief for the Protective Services Division. In my role as Bureau Chief I also serve as the Native American Liaison, ensuring that Protective Services is in compliance with the Indian Child Welfare Act, also known as ICWA.

ICWA was enacted in 1978 in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. Previous to ICWA, large numbers of Native American children were being forcibly removed from their homes. "In fact, (estimates show) that 25-35% of ALL Native American children were being removed from their families; of this high number of children who were removed, 85% were placed in non-Native homes and communities-even when relatives or other family members were available." (NICWA website)

These forced removals had devastating impacts on Native families and communities. The intent of Congress under ICWA was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." The efforts required to keep the Indian family together or to reunify the Indian family are set at a higher standard than for non-Indian families. "Because these added protections address not only specific systems abuses directed at Native children—but also their unique political status and cultural considerations—ICWA has been labeled "the gold standard" of child welfare policy by experts and national leading child advocacy organizations far beyond Indian Country. Specifically, the measures ICWA takes to keep Native children in relative care whenever safe and possible have become a best practice in the wider field of child welfare..." (NICWA)

The federal regulations which were published on June 14 2016 and effective on December 12, 2016 were the first comprehensive binding federal regulations for ICWA since its enactment in 1978.

ICWA is complex, but it is important to know some of the key concepts in the law and what is required of State courts and child welfare agencies:

Concept 1: Providing active efforts to the family (The definition of active efforts is “the provision of remedial services and rehabilitative programs designed to prevent the breakup of the Indian family”);

Concept 2: Identifying a placement that fits under the ICWA preference provisions;

Concept 3: Notifying the child’s tribe and the child’s parents of the child custody proceeding; and

Concept 4: Working actively to involve the child’s tribe and the child’s parents in the proceeding

It is also important to note that:

- the burden of proof for a State court to remove a child from an Indian community is enhanced in an ICWA case (as compared to a non-ICWA case)

- the burden of proof moved from a standard of “reasonable efforts” to a standard of “Active Efforts” with the 2016 update

- Evidence in an ICWA foster care case must be *clear and convincing*

- Hearings require testimony from a *Qualified Expert Witness* that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage.

- Similarly, for a State Court to terminate parental rights pursuant to the requirements of State law, State authorities must prove *beyond a reasonable doubt* that “active efforts” were made, and a “qualified expert witness” must testify that the Indian child would experience serious emotional or physical damage if the Indian parent or Indian custodian continued to have custody.

Now that we have reviewed a little about the law, I would like to discuss how we meet the requirements of ICWA here in NM. In NM, certain provisions of ICWA are restated in our Children’s Code; in addition, the entirety of the ICWA is binding on the courts and child welfare agency by virtue of the supremacy of federal law. Our Supreme Court has promulgated children’s court rules which specifically implement key provisions - identifying ICWA cases in the beginning

stages of a case, and ensuring appropriate placements of Indian children. ICWA is codified in the NM Children's Code, starting at 32A-1. Last but really not least in actual conduct of cases, ICWA compliance is also regulated through CYFD Policies and Procedures.

Protective Services works jointly with the 23 tribes and pueblos of NM to ensure that all children are protected from abuse and neglect. Absent some extraordinary agreement with the Tribe, Protective Services does not travel onto tribal jurisdictions to investigate cases of child abuse, nor do we provide services to families who reside on the reservation. Each tribe or pueblo is responsible for investigations of abuse or neglect per either their own, BIA, or FBI protocols. CYFD cross-reports any allegations involving a family residing on Indian land to that tribe or pueblo. There are many cases that may require a joint approach to working a case, for example if a family moves on and off of the reservation. In these cases, the jurisdiction would belong where the family is primarily domiciled, i.e. where they reside or intend to reside.

If CYFD investigates a child that we have reason to know is Native American, we are required per our procedure to send early notice to the child's tribe. This notice would be provided during the Investigative phase of a case, before a child is removed and placed in foster care. The early notice is not a requirement of ICWA, but is a best practice put in place here in NM due to the close working relationships with between CYFD and tribal partners. Our hope is that by involving the tribe early-on, efforts can be made to prevent the removal of the child. Tribal resources, including family and clan members, may be identified to step in to care for the child temporarily while the parents seek help; or the tribe may be able to offer other resources to the family that would assist the parents to keep the children at home.

ICWA does require that notice is sent to the tribes once a child has been removed, as well as to the child's parents. ICWA notices must be sent by certified mail, to ensure that the tribe receives the information on a tribal member being removed from the care of their parents. This practice is well-established in the child welfare system in NM, and is now also set out in a children's court rule.

CYFD has entered Joint Powers Agreements with several tribes. These Joint Powers Agreements ensure that federal dollars intended for the care of children in foster care is shared between the state and the tribal entity. (the JPAs are listed on the slides). In addition, we have Intergovernmental Agreements with the Navajo Nation and the Pueblo of Tesuque. These Intergovernmental Agreements provide some protocols on handling of cases involving children from these tribes. In addition, CYFD has agreements with the Navajo Nation and the Pueblo of Zuni to provide flow-through money from the Social Security Block Grant that the state receives.

I would like to review some data for you on the number of children affected by ICWA in our state. This information is current as of October 31, 2017.

There are currently 2,706 children in foster care in NM. 353 of these children are Native American, making a full 13% of the foster care population. These 353 children are from tribes across the US, but 322 are from tribes here in NM. Of the 353 Native children in care, 29.2% are placed with relatives. Even with the Indian Child Welfare Act, there remains a disproportionality with Indian children being removed from their homes. Protective Services investigations involving Native American children are substantiated at a rate of 34.5%, compared to a rate of 29.8% for other populations. In addition, these investigations result in a higher percentage of Native children being removed from the care of their parents; 13% of the total population of children in foster care are Native American children. This is an alarming statistic considering that Native Americans comprise only 10.6% of the NM population.

Now let's take a look at the information here on the PowerPoint regarding Indian children in foster care (slide 9). This slide shows the federal data indicators for children in foster care, meaning the federal government has set minimal standards for the states to meet for children in foster care. For example, the first data set is on children currently in foster care who had experienced what we call "repeat maltreatment" during the last year. "Repeat maltreatment" means that the child has experienced abuse or neglect more than once during the last year. The federal standard is that only 9.1% of children should be effected by repeat maltreatment (with of course the ultimate goal being zero maltreatment being experienced by any child). In NM, the data indicates that 15.4% of non-Native

children in care experience repeat maltreatment; but for Native children, the number moves up to 16.5%. The other measures reflected in this chart are:

- rate of victimization per days in foster care
- permanency within 12 months of entering foster care
- re-entries to foster care for children who reunify within 12 months
- Permanency in 12 months for children in care 12-23 months
- Permanency in 12 months for children in care 24+ months
- Placement moves rate per 1,000 days of foster care

The data indicators for all of these data sets are worse for Native children than they are for non-Native children, even with the requirements of ICWA. Although ICWA helps level the playing field, so to speak, it does not remove all of the particular and challenging socioeconomic factors that affect Native families.

CYFD is tasked with ensuring that active efforts are made to prevent the breakup of the Indian family. If a non-Indian family is identified as needing supports, services, or resources to make their home safer, we try to link families up with resources to meet their needs. For an Indian family, we must be able to prove that we made not only reasonable efforts to rectify the crisis in the home, but active efforts. We must provide services beyond what we would provide for a non-Indian family. This can be a challenge in NM, due to the rural nature of our state and due to a lack of resources in many communities. Many Native families struggle with socioeconomic factors that limit their ability to provide a safe home for their children; if there are additional stressors on the family, like alcohol or drug abuse, domestic violence, or mental illness, these issues must also be mitigated.

Family Centered Meetings are one of the approaches CYFD uses to ensure that the family has an opportunity to create a plan to keep their children safe. Extended family members are often utilized to provide care for children temporarily while the parents are seeking services. We rely on our tribal partners to attend these Family Centered Meetings when an Indian family is involved. Tribal caseworkers or ICWA workers will attend Family Centered Meetings to advise the plan, support the family, and ensure that cultural heritage connections

are not lost for the children. Family Centered Meetings are conducted by a professional facilitator who is employed by CYFD to keep the meeting on track and help create the plan. CYFD recently received feedback from the NM Tribal ICWA Consortium that these meetings do not always feel supportive to families, and can be intimidating. We are now piloting a new idea in one county that we hope will improve the feel of these meetings. We have asked the Acoma tribal representative to take the lead in facilitating Family Centered Meetings involving a family from Acoma, or to co-facilitate the meetings. We are committed to making this process useful and supportive for all families, but especially Native families.

If a child must be placed in foster care, CYFD should make all efforts to have the child placed with a relative. ICWA defines what types of placements are considered “preferred” placements for children in foster care. The placements preferences are, in order:

- (i) a member of the Indian child’s extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child’s tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs.

The first preferred placement is the child’s extended family, which includes both Indian and non-Indian family members. In New Mexico, any extended family member who wishes to care for a child must be fully licensed as a foster family and meet all requirements for foster parenting. This includes having a full home study completed, full foster parent training, and all required background checks. CYFD will license any family living off of the reservation; any family that lives on a reservation or tribal land would be referred to the tribe for licensing and certification of the home. CYFD honors reciprocity for tribes to conduct their own home studies. If the home is licensed, CYFD then arranges to reimburse the foster family for care of the child. Most tribes also provide courtesy supervision and

monitoring of these homes for CYFD by providing a monthly home visit to the child. CYFD will maintain the open case on the family, but the child's placement will be monitored by the Tribe. This ensures that the child can stay with family members while not infringing on the sovereign rights of the tribe.

Co-Chair Pinto and Members of the Committee, we hope that this has given you an opportunity to understand how the child welfare system in NM has not only complied with ICWA here in NM, but have embraced the higher standards as a best practice. Given the uniquely diverse heritage of our State, and our history of holding our families as sacred, we must make our best efforts to preserve our families and hold up our children. We appreciate your continued support for children in foster care in NM. And of course we are always open to questions, now, or if you think of them later, my contact information is here on the PowerPoint. Thank you.