

The Indian Child Welfare Act in New Mexico

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The History of ICWA in NM

- ICWA was enacted in 1978, and updated in December 2016
- The December 2016 Guidance was the first update to this law since it was enacted
- NM statute regarding ICWA can be found at: 32A-1 et seq
- ICWA is considered the “Gold Standard” for Child Welfare cases

Key Concepts in ICWA:

- The Burden of Proof for a State Court to remove a child from an Indian community is enhanced in an ICWA case
- The Burden of Proof moved from “*Reasonable Efforts*” to “*Active Efforts*” with the 2016 update.
- *Active Efforts* means the provision of remedial services and rehabilitative programs designed to prevent the breakup of the Indian family

- Evidence must be *clear and convincing*
- Requires 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.

Protective Services holds Joint Powers Agreements with:

- Pueblo of Cochiti
- Jicarilla Apache Tribe
- Pueblo of Nambe
- Pueblo of Pojoaque
- Pueblo of Acoma
- Pueblo of Picuris
- Pueblo of Zuni
- Pueblo of Santa Ana
- Pueblo of Santa Clara
- Pueblo of Taos

Protective Services holds Intergovernmental Agreements with:

- Navajo Nation
- Pueblo of Tesque

Protective Services holds Social Security Block Grant Agreements with:

- Navajo Nation
- Pueblo of Zuni

Foster Care in NM

2,706 total children
in foster care

353 Native
American children in
foster care

Over 220 tribes
represented

29.2% Native
American CIC
placed with a
relative

13% of children
in custody are
Native American

National Standard	Desired Trend	Federal Fiscal Year 2018 (Rolling 12 Months Ending 9/30/17)	Statewide Performance: All Children	Statewide Performance: Children with Tribal Status
9.1%	↓	Children subject to repeat maltreatment within 12 months	15.4%	16.5%
8.5	↓	Rate of victimization per day of foster care	12.2	23.1
40.5%	↑	Permanency within 12 months of entry	30.1%	28.3%
8.3%	↓	Re-Entries for children who reunify within 12 months	7.2%	4.7%
43.6%	↑	Permanency in 12 months for children in care 12-23 months	36.3%	33.3%
30.3%	↑	Permanency in 12 months for children in care 24+ months	33.3%	32.1%
4.1	↓	Placement moves rate per 1,000 days of foster care	6.0	6.9

Protective Services's Role in ICWA Compliance

- CYFD Protective Services Native American Liaison Cynthia Chavers
- CYFD Native American Liaison Bernie Teba, Office of the Secretary
- NM Tribal Partners group facilitated by the Casey Foundation. This group meets quarterly to enhance ICWA work and collaboration
- Representation on the Children's Court Improvement Commission/Protective Services Workgroup
- NM Tribal ICWA Consortium Interested Party
- NM Tribal Judicial Consortium Attendee

For questions, please
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