



ICWA Court

Second Judicial District Court, Bernalillo County

Vision Statement: A renewed commitment to preserving an Indian child's family, culture, and connection to their People.

Mission Statement: The ICWA Court is committed to ensuring that Indian families and their tribes are benefitting from the protections of the Indian Child Welfare Act and the Children's Code. Stakeholders commit to working with Indian families in the abuse and neglect system to achieve better outcomes for these families.

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Introduction



History of ICWA (1978) and IFPA (2022)

The *National Council of Juvenile and Family Court Judges* created a benchbook that includes an accurate history of the Indian Child Welfare Act:

Congress passed the Indian Child Welfare Act (ICWA) in 1978 in response to the wholesale removal of Indian children from their families. Congressional findings memorialized in ICWA included “an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by non-tribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions” 25 U.S.C. § 1901(4) and that states “often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.” 25 U.S.C. § 1901(5).

The Department of Interior, Bureau of Indian Affairs (BIA) promulgated federal regulations governing ICWA in 2016. These binding regulations provide additional definitions, timelines, and required judicial findings that must be made on the record in an effort to create more consistency in ICWA implementation.

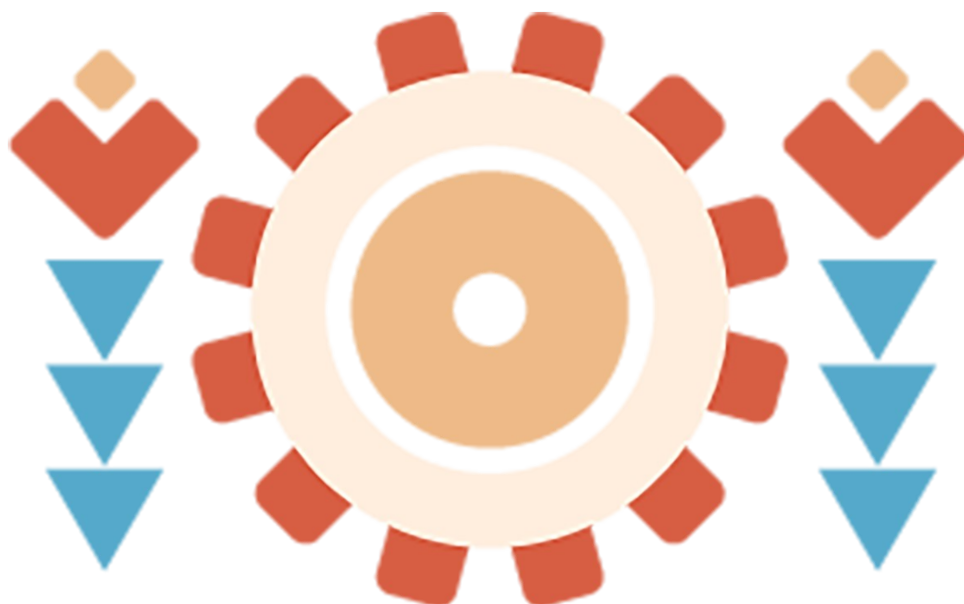
The statute and regulations together create the minimum federal requirements for Indian families. States may increase protections and requirements, but may not decrease them beneath the floor created by the law. 25 C.F.R § 23.101; 25 C.F.R. § 23.106.¹



¹ NCJFCJ Indian Child Welfare Act Judicial Benchbook, 2017.

New Mexico has 23 sovereign nations, each with their own experience with our state’s child welfare agency, the Children, Youth and Families Department (CYFD). In 2015, many of those tribal ICWA social workers came together under the New Mexico Tribal ICWA Consortium (NM TIC) to share their experiences and coordinate efforts at reform in child welfare. A plan was formulated, and by 2020, a tribally-led drafting group came together to create and draft a bill to raise the bar for child welfare practice in New Mexico: The Indian Family Protection Act (IFPA). The drafting group consulted with tribes throughout the entire process, and also consulted with practitioners and the Tribal-State Judicial Consortium on a few technical details. Although the first version of the bill did not pass in the 2021 Legislative Session, a revised and expanded version of the law passed in 2022, and has been signed into law by the Governor.

The Indian Family Protection Act (IFPA) expands upon the protections of the Indian Family Protection Act, 2022. “The bill establishes coordinated statewide efforts between Tribal nations and other essential stakeholders to provide care, protection and promotion of cultural wellbeing for the Indian Tribal and Pueblo children and families. [] IFPA supports the 23 sovereign nations’ inherent right to exert their powers in matters dealing with their tribal members.”²



² Indian Family Protection Act website, <http://nmstateicwa.org/> (last visited 5/3/22).

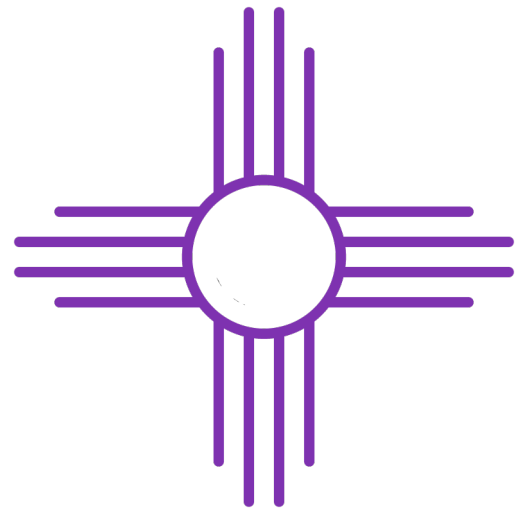
History of ICWA Court

The ICWA Court is a specialty court of the Second Judicial District Court, Children’s Court Division. Our ICWA Court strives to honor and comply with the spirit of ICWA and IFPA by collaborating with tribal counterparts and families to achieve positive outcomes and permanency for Native American children in care while preserving their familial and cultural connections.

ICWA Court began serving families on January 1, 2020, and remains a shining example of what can be accomplished by coordinating efforts at surrounding and supporting our Native American families in Bernalillo County. With implementation of ICWA Court, we take a collaborative and solution-focused approach with our partners to continue to have positive outcomes. The ICWA Court listens to each other and demonstrates best practices for the benefit of the children and families. Our ICWA Court is the only one in New Mexico, but the NM Partners continue to work on expansion to other jurisdictions and we look forward to supporting new sites and new ICWA Court teams throughout New Mexico.

Scheduling

The ICWA Court Training and Staffing occurs on one Tuesday afternoon a month. Two weeks later, the ICWA Court docket is set for review and permanency hearing. Because the length of time for trial is not predictable from case to case, the scheduling of the ICWA Court trial settings occur throughout the month due to the significant amount of time ICWA trials can take. Any concerns with a scheduled trial setting can be addressed with the Judge by filing a motion.



5 Key Principles for Program Success of ICWA

Employing these five key principles in our program keeps us faithful to our goals and partnerships. Every new endeavor, approach, or action the program decides to take should align with these five strategies. Reviewing our progress through the neutral lens of data will help guide how we expand and where we need more resources or training.

1. Identifying the ICWA Team
2. Continuing ICWA Training: Legal and Cultural
3. Implementing the Team Approach
4. Developing Tribal and Community Relationships
5. Collecting Data



1. Identifying the ICWA Court Team

Critical team members

- ◆ Judge
- ◆ ICWA Court Program Manager and administrative support
- ◆ Tribal ICWA social workers (supported by their tribal leaders, judges, and attorneys)
- ◆ Children, Youth and Families Department (CYFD): ICWA Specialists and their Children’s Court Attorney
- ◆ Specialized attorneys for parents
- ◆ Specialized attorneys for children and youth

Beneficial team members

- ◆ NM Family Advocacy Program social workers and parent mentors
- ◆ Court-appointed Special Advocates (CASA)
- ◆ Relatives

Supportive entities

- ◆ ECECD (Early Childhood Education and Care Department)
- ◆ CYFD Office of Tribal Affairs
- ◆ NM Partners ICWA Court Advisory Board
- ◆ Administrative Office of the Courts



The ICWA Court has specialized respondent attorneys, youth attorneys, and guardians *ad litem* who work with families and the tribes, and we view a tribe’s assigned social worker as a critical team member. We include all these experts in our meetings, staffings, and decision-making for the families. Additionally, CYFD has a specialized ICWA Unit in Bernalillo County and has ICWA Specialists who are trained to work exclusively with our Native American families. Finally, Judge Catherine Begaye is the ICWA Court judge and hears the cases for this family and supports reunification by continuing to emphasize collaboration between all partners.

Our team members, partners, and supportive entities make up a collaborative multidisciplinary team that benefits our families in a significant way. It is important to be able to hear other perspectives and viewpoints so we can see the whole picture with the family. By doing so, the team members create positive working relationships and establish trust and mutual respect for each other. It is imperative to discuss any barriers or issues early and often so we may resolve them quickly.

2. Continuing ICWA Training: Legal and Cultural

All partners involved in ICWA Court have ongoing training to ensure that the program continues to set the foundation for best practices in serving Indian families. The ICWA Court Program Manager is responsible for setting the training agenda for the team for the year, and works to balance legal and cultural training by creating training programs that draw on both.

While the training is mandatory for the court, attorneys, and ICWA Specialists, we invite our tribal partners with cases in ICWA Court to all trainings so they can add to the discussion and provide a tribal perspective. We also ask and provide room for all stakeholders and partners to have an opportunity to train and present to the rest of the team.

Training programs are offered about 8 times a year, in addition to the yearly CYFD ICWA Summit. This Summit includes statewide practitioners, state and tribal judges, tribal leadership, ICWA trainers, attorneys, and CYFD personnel. The entire ICWA Court team, along with all tribal partners in the state, attend and are often called upon to present to our statewide colleagues.

3. Implementing the Team Approach

Our goal is to actively engage and partner with parents, children, their respective attorneys, tribal representatives, and stakeholders involved with Protective Services. Frequent and ongoing communication is vital. Whether that be through monthly staffings, family centered meetings, or court hearings, consistent and ongoing communication with all stakeholders is critical to achieve positive outcomes for our families.

Previously, every case was staffed every month with all team members. As we have continued to grow and learn, the ICWA Court Program Manager implements a staffing schedule for ICWA Court cases based on an assessment matrix that is intended to staff a case at the time when critical decisions are going to be made. Additionally, the ICWA team members may suggest a case be staffed when there is a barrier or a concern. Meeting to discuss all cases promotes an increased rate of collaboration, along with decreasing the amount of time children are in an out home placement.

The Program Manager hosts quarterly stakeholder meetings to ensure that the program receives timely feedback - whether positive or negative - to better our practice moving forward. Many times, the feedback we receive results in a training session or a program change that better aligns our efforts. The Program Manager's role is crucial in encouraging and promoting this collaborative effort.



4. Developing Tribal and Community Relationships

Developing a positive working relationship with tribal partners and community is a pivotal element in the success of ICWA Court. It is crucial to have tribal partners in our hearings, staffings, conversations and all decision-making points in cases regarding families. When we cultivate a consistent multidisciplinary team, the outcomes for families speak for themselves and there is a noticeable increase in collaboration and willingness to ask one another for support.

5. Collecting Data

It is important to track data because it tells us where we have been versus where we are now. It also lets us evaluate what has worked and what has not.

The Program Manager tracks data on a number of different data points:

- ◆ Type of placement the child is in (relative, non-relative, ICWA-compliant, etc.)
- ◆ The child is in a preferred placement or a finding of good cause to deviate from the placement preferences
- ◆ Tracking our tribal population set by identifying which tribes are working with our ICWA Court
- ◆ Resolution for each case, including reunification, permanent guardianship, etc.
- ◆ Length of time child remains in out of care placement
- ◆ Length of time a case is pending
- ◆ Number of cases and children being served in ICWA Court

One of our greatest successes is that children in ICWA Court have been placed with relatives over 70% of the time. This number is well above the national average for children in foster care overall, and well above the state average for children in CYFD's legal custody.



To date, no case in ICWA Court has resulted in a

termination of parental rights. Our resolutions have included reunification with one or both parents, permanent guardianship with relatives, transfer of cases to tribal court, or early dismissal of a case to a relative. The goals of ICWA are achieved in ICWA Court because we focus on keeping children with their parents or their relatives.

It is also important to track analytical data, such as time of petition to the determination of ICWA, as well as length of time from the petition to Notice to the tribe. Timely confirmation of ICWA in cases is a benefit to ensure ICWA is followed throughout the life of the entire case.

Requesting a case be moved into ICWA Court

For cases filed prior to January 1st, 2020, a party or tribe may request a case be considered for ICWA Court. The party or tribe will need to provide sufficient information from which the staffing team can understand the needs of the family to assess whether ICWA Court is the right program for the family. Please fill out the form in the appendix, along with the required attached page indicating why the case should be considered for ICWA Court, and notify the other parties to this case that you are requesting the case be transferred into ICWA Court. Also, please note that the request to transfer is only available for cases that are in Bernalillo County.

These requests are addressed as they are received, and your request will be addressed at our next available staffing. You may be asked to provide more information, if needed. Our goal is to provide you a response fairly shortly thereafter. If a case is moved into ICWA Court, ICWA Court attorneys will be assigned to the case.

ICWA Court Program Manager

In 2022, the ICWA Court was able to hire a Program Manager, in addition to an Administrative Assistant. You may call the Program Manager if you have questions about the program, training, schedule, or general questions. The Program Manager may also be reaching out to you for leading training and to be involved in any initiatives the ICWA Court takes on.

Contact Information:

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Pueblos and Reservations in New Mexico



Source: www.tourism.org