

**HB 135: The New Mexico Indian Family Protection Act solidifies and expands protections for Indian children, families, and Tribes.**

**Structure of the bill:**

- The first (42) sections of the bill are new material and make up the **Indian Family Protection Act (IFPA)**
- The majority of the remaining sections capture amendments to the existing Children’s Code. These amendments primarily do two things:
  - Clarifies the process for determining whether a child is an Indian child and subsequently, if IFPA will apply to the child custody proceeding
  - Strikes sections related to Indian children and consolidates them into IFPA
    - Sections that were stricken from the Children’s Code and put into IFPA include: predisposition studies; dispositional judgement findings; permanent guardianship; periodic judicial reviews; adoption decrees; post-decree adoption records; and several subsections related to independent adoptions
- The Indian Family Protection Act both draws from, and goes beyond existing law.
  - ◆ IFPA includes:
    - Existing material from the federal Indian Child Welfare Act of 1978, the Bureau of Indian Affairs (BIA) Indian Child Welfare Act Regulations, and BIA Guidelines (2016).
    - New material specific to the state of New Mexico that will strengthen and surpass the requirements of federal ICWA. These sections were largely developed based on the expertise of tribal leaders, ICWA workers, and other practitioners.

**Key Definitions Touched In HB 135:**

- **Indian Family Protection Act (IFPA)**
  - New definitions in IFPA: child custody proceeding, cultural compact; discussion with an Indian tribe; extended family member; fictive kin
- **Children’s Code**
  - New or amended definitions in the Children’s Code: Active efforts; the federal Indian Child Welfare Act of 1978; Indian; Indian child [expands the definition of who can be considered an Indian child]; Indian custodian; Indian tribe; member or membership; parent [expanded the definition to include Indian parents who adopted pursuant to state law, tribal law, or tribal custom]; relative [now includes relations as defined by the tribe]; tribal court

## **Sections of IFPA in which New Mexico will go beyond federal law:**

- **Notice**
  - Establishes a system for early notification at the investigation stage
  - Establishes requirements on what and how CYFD and the Court must communicate with tribes
  
- **Transfer**
  - Sets a procedure for the transfer of a case from the state Court to a tribe
  - Sets a standard of evidence for denying transfer
  
- **Qualified Expert Witness (QEW)**
  - Establishes specifics on the requirements of a QEW, including time restriction to select a QEW
  - Amplifies the significance of the Tribes, Nations and Pueblos' role in the process
  
- **Placement Preferences:**
  - Establishes a procedure of change in placement and reassessments and sets required timelines for CYFD to conduct case monitoring
  
- **Training:**
  - Establishes required training on IFPA
  
- **Role of Tribes in Intervention:**
  - Establishes that, in the case of Indian children, an Indian child's relatives, extended family, and tribe will be permitted to intervene
  - Clarifies that tribes can participate and attend hearings regardless of whether they have intervened
  
- **Termination of Parental Rights (TPR)**
  - Establishes that the Court must consider whether an alternative to termination of parental rights would be in the best interest of the child, and reflective of tribal customary practices
  - Establishes that the termination of parental rights involving child cannot be ordered unless the Indian child's tribe was provided timely notice and an opportunity to state whether it opposes the termination
  
- **Transition Services**
  - Requires that CYFD create transition services for Indian children before they turn eighteen, and requires that the tribe must be consulted in transition planning
  
- **Specific Focus on Indian Children**
  - Creates the Office of Tribal Affairs within CYFD dedicated to ensuring compliance with and full implementation of the Indian Family Protection Act

**The federal Indian Child Welfare Act is at risk. New Mexico must pass the Indian Family Protection Act to solidify and expand protections for Indian children, families, and tribes.**

**What is the Indian Child Welfare Act?**

→ Indian Child Welfare Act (ICWA) of 1978;

Congress recognized the unique political status of tribes and tribal members through the enactment of ICWA. Although there have been challenges with implementation, ICWA has been recognized as the “gold standard” within child welfare in that it created minimum standards of protection which specifically address Indian children in the child welfare system.

- ◆ Enacted “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture” (25 U.S.C. §§ 1902).
- ◆ Passed in response to the overwhelmingly high numbers of Indian children being forcibly removed from their families and tribal communities nationwide—up to 25% in some Indian communities.

**Why move this work in New Mexico?**

→ There are 23 sovereign nations within the state of New Mexico, some extending to other states. Nations, Tribes, and Pueblos have the inherent right to exert their sovereign powers in matters dealing with their members and should be able to make decisions regarding their children.

→ Challenges to ICWA at the federal level threaten the well-being of Indian children and families by attempting to undermine tribal sovereignty and tribal self-determination, thereby putting into question the unique political status of Indian tribes.

→ Indian Tribal and Pueblo children and families are also residents of the state of New Mexico. Coordinated efforts between tribes and states are critical to provide for the care, protection, and promotion of cultural well-being, and the wholesome mental and physical development of children and families.

**Tribal leaders, Tribal ICWA workers, advocates, and impacted families have come together to craft the Indian Family Protection Act.**