



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF HEALTH & HUMAN SERVICES
LANSING

ROBERT GORDON
DIRECTOR

Native American Affairs Policy Manuals

**INDIAN CHILD
WELFARE ACT
(ICWA)**

In 1978, the federal Indian Child Welfare Act (ICWA) was passed to promote the stability and security of Indian tribes and cultures and to protect the best interests of Indian children and individual families by:

- Establishing minimum standards governing any interference with Indian children's relationships with their parents, family or tribe.
- Providing for the placement of Indian children who must be removed in foster or adoptive homes reflecting the unique values of Indian culture.
- Providing for assistance to Indian tribes for operations of child and family services programs.

**MICHIGAN INDIAN
FAMILY
PRESERVATION
ACT (MIFPA)**

The Michigan Indian Family Preservation Act (MIFPA) was enacted by the state of Michigan on January 3, 2013. MIFPA strengthens, clarifies and enhances the federal Indian Child Welfare Act (ICWA) implementation in Michigan courts and state child welfare services.

**Protecting Indian
Children**

Federal and state Indian child welfare policy promotes protection of the rights of Indian children to develop a tribal identity, and to maintain ties to the Indian community within a family where their Indian identity will be nurtured. This is based on the premise that protection of cultural identity, both as a community and as an individual, will produce the most well adapted adult Indian individual.

ICWA/MIFPA serves to promote the long-standing responsibility of Congress for the protection and preservation of Indian tribes and their resources. ICWA/MIFPA recognizes there is no resource more vital to the continued existence and integrity of Indian tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for

membership in an Indian tribe (Indian Child Welfare Act, 25 USC 1901 et. seq. and Michigan Indian Family Preservation Act, MCL 712B. 1 - 41).

Recognition of Tribes

Department of Health and Human Services (MDHHS) recognizes that in serving Indian children, we are working with members or descendants of political entities; that is, with Indian tribes, and not with persons of a particular race. In addition, MDHHS recognizes the unique political status of tribes based on treaties and law. Indians have a dual citizenship status. Members of Indian tribes maintain their tribal citizenship at the same time as their citizenship in the U.S. (see NAG, Indian Self-Determination and Education Act).

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Indian Child Welfare Act, 25 USC 1901 et. seq.

Indian Self-Determination and Education Act, 25 USC 450 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

OVERVIEW

Identifying known or potential Indian child(ren) on all cases is an important case activity. This policy item outlines how to identify when a child may have tribal membership/citizenship or eligibility, and the steps that must occur to optimize collaboration between the child welfare system and the tribe(s).

Identification of an Indian child must occur at the earliest point possible in any case, which is typically within the investigation stage, where there is reason to believe that child has been or is at risk of being abused or neglected as defined in [PSM 711-2 Definitions, Responsibilities and Maltreatment Types](#).

However, if a case manager becomes aware of subsequent information that would indicate a potential Indian child has been or is at risk of child abuse or neglect, identification steps must occur at that time.

DEFINITIONS

Indian child

An unmarried person who is under the age of 18 and is either of the following (MCL 712B3(k)):

- A member of an Indian tribe.
- Eligible for membership as determined by that Indian tribe.

FORMS

[MDHHS-5598, American Indian/Alaska Native \(AI/AN\) Child/Parent Tribal Enrollment/Eligibility Verification](#)

REASON TO KNOW A CHILD IS AN INDIAN CHILD

A reason to know a child is an Indian child includes, but is not limited to the following:

- Any person with awareness of the family and/or child, a family member, an officer of the court involved in the proceeding, an Indian tribe, or an Indian organization, has indicated that the child is or may be an Indian child.
- The child gives the court or department reason to know that they are or may be an Indian child.

- The domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village.
- The child is or has been a ward of a tribal court.
- Either parent or the child possesses an identification card indicating membership in an Indian tribe.

State courts must also conduct inquiry in child welfare cases to determine if there is reason to know a child may be an Indian child (25 CFR § 23.107).

INQUIRY AND NOTIFICATION PROCESS

The process for verification of tribal membership/citizenship, enrollment, or eligibility notifies tribal governments of a potential Indian child welfare case and affords opportunity for collaboration on child welfare cases.

Inquiry to identify an Indian child must be made at the initial contact with case members; see [CPS Investigation Flow Chart](#). Case managers must ask the parent(s), caretaker(s), child(ren), and/or Indian custodian(s) for each child in the household if the person knows or has reason to know that the child is an Indian child (25 CFR 23.107(a)).

This requirement applies not only during the initial CPS investigation but also throughout the life of a foster care or adoption case. Case managers must continue to assess and inquire about a child's potential Indian status as new information becomes available, such as when a previously unidentified parent or relative is located. Ongoing diligence is essential to ensure full compliance with ICWA and MIFPA.

The MDHHS-5598, American Indian/Alaska Native Child/Parent tribe Enrollment/Eligibility Verification, is used to identify children who may be enrolled or eligible for enrollment with a tribe. The form should be sent at the earliest point possible in the case, but must be sent within three-business days of the point when there is reason to know a child may be an Indian child and there is reason to believe that child has been or is at risk of being abused or neglected. Only individual tribal governments can verify tribal membership or eligibility.

Note: The Indian Child Welfare Act (ICWA) and the Michigan Indian Family Preservation Act (MIFPA) do not apply to Canadian Indian/First Nations or non-federally recognized tribal child welfare cases. Do not send the MDHHS-5598, DHS-120, or share case information with a Canadian Indian/First Nation or non-federally recognized tribe.

Required Contact with Tribe(s)

Contact with the tribe(s) is necessary if **both 1 and 2 are true:**

1. There is *reason to know* a child may be an Indian child as defined by the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA); see *Reason to Know a Child is an Indian Child* in this item.
2. There is *reasonable belief* that the child has been or is at risk of being abused or neglected. Situations that constitute *reasonable belief* include:
 - A child identified by Centralized Intake who has been or is at risk of being abused or neglected at the time of referral.
 - Any child who is identified during an investigation or on an active case who is alleged to be, or is determined to be, at risk of being abused or neglected.

Note: Reasonable belief is an opinion that a reasonable person would form based on information and observation from credible and reliable sources.

Completion of the MDHHS-5598

The MDHHS-5598, American Indian/Alaska Native (AI/AN) Child/Parent Tribal Enrollment/Eligibility Verification, must be sent for each child within three business days of the point that there is reasonable belief that the child has been or is at risk of being abused or neglected **and** there is reason to know the child may be an Indian child.

If there is *reason to know* that the child is a member/citizen or is eligible to enroll in a **federally recognized** American Indian/Alaska Native Tribe, the case manager must gather as much of the genealogy information as possible from the child, parent, tribe, or any other person with knowledge of the child's or parent's tribal

membership/citizenship or eligibility in a culturally competent manner using the MDHHS-5598, American Indian/Alaska Native (AIAN) Child/Parent Tribal Enrollment/Eligibility Verification.

Case managers should make every effort to complete up to the great-grand parent boxes on the MDHHS-5598.

Note: Failure to gather information and provide accurate family history/genealogy to an ICWA Designated Tribal Agent for a child's tribe may result in a case reversal in court (25 CFR 23.2(4)).

Centralized Intake is not responsible for sending the MDHHS-5598 even when an Indian child is identified on the referral.

The MDHHS-5598 should not be sent for a child on a case that has not been nor is at risk of being abused or neglected (non-victim child). **Only send the MDHHS-5598 for alleged or confirmed Indian child(ren) who have been or are at risk of being abused or neglected.**

If a child, who there is reason to know may be an Indian child, is not identified as having been or at risk of being abused or neglected at intake but this determination changes, the MDHHS-5598 must be sent within three-business days.

Sending the MDHHS-5598

As required by the Bureau of Indian Affairs (BIA), case managers must use the [ICWA Designated Agents Listing | Indian Affairs \(bia.gov\)](#) to identify mailing addresses, email addresses, and contact information for appropriate tribal Indian Child Welfare Act (ICWA) staff within the United States (25 CFR 23.105 and 25 CFR 23.111(e)).

The MDHHS-5598 may be sent via email, fax, regular mail, or delivered in person to the ICWA Designated Tribal Agent for the tribe(s) in which the child/parent may have affiliation.

If only one potential tribe is identified, the MDHHS-5598 must be sent to the identified tribe's ICWA Tribal Agent cited in the ICWA Designated Agents Listing.

If multiple tribes are identified, the MDHHS-5598 must be sent to each of the identified tribes' ICWA Tribal Agent cited in the ICWA Designated Agents Listing.

If the tribe's identity is unknown, the MDHHS-5598 must be sent to the Secretary of the Interior (BIA) at the address below. MDHHS must also send the MDHHS-5598 to the tribe(s) located in the county where the child is located (MCL 712B.9(3)).

Attn: Director
Midwest Regional Office Bureau of Indian Affairs
Department of the Interior
Norman Pointe II Building, 5600 W. American Blvd., Suite 500
Bloomington, MN 55437

Additional Mailing Guidance

If there are multiple paternal parties for the child (biological, legal, or putative parent), send the MDHHS-5598 to the respective tribe of each paternal party.

Example: An investigation includes two children who have been or are at risk of being abused or neglected who have different fathers. Each father identifies their child as an Indian child, but from separate tribes. The case manager should ensure that each tribe receives the MDHHS-5598 for the child of potential association. Do not send both MDHHS-5598s to each tribe.

Although the MDHHS-5598 is not required to be sent by registered mail/return receipt until it is included with a DHS-120, American Indian/Alaska Native (AI/AN) Court Hearing Notification, if a tribe or the BIA requests registered mail/return receipt, send the form as such.

Note: The DHS-120, American Indian/Alaska Native (AI/AN) Court Hearing Notification, must be sent registered mail/return receipt. Additionally, case managers must include the petition, referral, or other documents by which the proceeding was initiated; see [NAA 210, Notification of Court Proceeding](#).

A tribe may have a preferred method of ICWA/MIFPA correspondence or protocol; case managers should ask the tribe for their preferred method (email, fax, mail, etc.) of receiving the MDHHS-5598.

When sending only the MDHHS-5598, do not include any confidential Children's Protective Services information; see [SRM 131 - Confidentiality](#).

CASE ASSESSMENT AND DOCUMENTATION

For each case assignment, a case manager must review the MDHHS electronic case management system to determine if there is previous tribal membership/citizenship, enrollment, or eligibility information in the case record pertaining to a ***federally recognized tribe***.

Prior Verification

Tribal membership/citizenship, enrollment, or eligibility may change throughout time. If tribal membership/citizenship, enrollment, or eligibility is found in the MDHHS electronic case management system for a child, verification of the current/continued status of a child's membership/citizenship, enrollment, or eligibility must still be completed for each new child welfare episode even if the prior verification indicated the child was not a member/citizen or eligible for membership/citizenship. A new MDHHS-5598 must be completed for each child welfare episode for verification of an Indian child.

Case managers must contact the ***federally recognized*** tribe(s) found in the MDHHS electronic case management system and any other required ***federally recognized*** tribe if there is a *reason to know* there is an Indian child and to confirm current/continued membership/citizenship, enrollment, or eligibility status. Previous information must be verified and confirmed.

Attach the MDHHS electronic case management system information found in the child's record of tribal membership/citizenship, enrollment, or eligibility to the new MDHHS-5598 when establishing current/continued tribal status.

Documentation

The MDHHS-5598 and all correspondence must be uploaded to the child's MDHHS electronic case management system ICWA detail record. Case managers must document within social work contacts that questions regarding the child being an Indian child were asked, of whom, and how it was answered (25 CFR 23.107(b)).

Case managers must upload all department forms for Indian child welfare case management, as well as any tribal documentation/correspondence provided by the tribe or client, into the MDHHS electronic case management system. Documentation

must occur through use of social work contacts and uploaded documents within the electronic case management system.

IMMEDIATE PETITIONS

For cases where the department initiates a child custody proceeding/petition in court concerning a child where there is reason to know the child **may be an Indian child**, the case manager must also send ICWA notice utilizing the [DHS-120, American Indian/Alaska Native \(AI/AN\) Court Hearing](#), and all required notice attachments, including but not limited to:

- MDHHS-5598.
- Petition.
- Mailing recipient contact list.

See [NAA 210, Notification of Court Proceeding](#), and 25 CFR 23.111(d).

TRIBAL RESPONSE

Tribal Verification Responses

Within **five-business days** of receipt of tribal verification (verbal or written), case managers must update the child's Tribal Status in the electronic case record (if tribal response is different than Tribal Status listed) and/or to reflect any new ICWA/MIFPA case information received.

Note: County leadership must determine or assign appropriate staff to upload any tribal correspondence or verifications received after case closure to the case record and to update the ICWA case record.

No Response

If a tribe has not responded to the MDHHS-5598 within **10-business days**, the case manager should follow up with the tribe by phone, email, in-person, and/or faxed inquiries with the ICWA Designated Tribal Agent at the child's tribe.

Case managers must document in the child's MDHHS electronic case management system case record the due diligence in obtaining tribal affiliation verification and must implement

ICWA/MIFPA requirements until the court makes a determination whether the child is an Indian child (25 CFR 23.108; 81 FR 38778).

SUPERVISORY CONTROL PROTOCOL

The Supervisory Control Protocol (SCP) enables supervisors to review and verify compliance with investigation requirements. The SCP contains questions regarding requirements related to identification of and notification of Indian children; see [PSM 713-14, Supervisory Oversight](#).

RESOURCES

Case Manager Tools

- CPS Investigation Flow Chart
- The State of Michigan ICWA/MIFPA Field Guide
- Michigan Tribal Service Area Map
- MDHHS/SCAO Indian Child Welfare Act Posters (Pub 5064)
- MDHHS Native American Affairs website
- A Guide to Compliance with the Indian Child Welfare Act

Native American Outreach Workers (NAOWs)

MDHHS Native American outreach workers (NAOW) are available in 12 counties and may assist case managers with verification upon approval of a Native American Outreach Services (NAOS) supervisor; see NAOW contact list at [NAOW Contacts](#), and [DHS-382, Native American Outreach Services Referral](#).

CONTACT

For more information about this policy contact MDHHS-NativeAmericanAffairs@michigan.gov

**ENGAGING
FAMILIES IN CHILD
PROTECTIVE
SERVICES AND
FOSTER CARE
CASES**

A critical aspect of engaging families is to work with them in the context of their culture and ethnicity which may involve:

- Exploring how culture and rituals influence parenting decisions.
- Determining what services and supports will be most effective.
- Honoring tribal practices.

**Cultural
Competency**

Incorporate the Indian culture when planning for services and evaluate the effectiveness of the services to meet the cultural needs of the child(ren) and family in collaboration with the Indian child's tribe.

As an engagement tool, caseworkers may incorporate a DHS-120C, American Indian/Alaska Native Child Welfare Cultural Plan, into case plans and service agreements for all Indian child welfare cases throughout the placement episode; see [Passports for Native Children](#) or at www.tribal-institute.org for guidance. Cultural plans should be logged/scanned into MiSACWIS for the case record.

With involvement of the family and tribe, caseworkers should create a manageable, tribal specific, and age-appropriate cultural plan utilizing the Cultural Activities/Cultural Items examples found on the DHS-120C.

Caseworkers should identify and complete a minimum of one tribally specific item per category (one item for cultural activity and one item for cultural items) for each reporting period. Caseworkers should submit an exception narrative in MiSACWIS for supervisor approval if cultural activities or cultural items are not identified, completed, or procured.

Note: A cultural plan is voluntary for the *client* and is not a court requirement.

**INTERVENTION IN
COURT CASES**

Case Identification

See NAA 200, Identification of Indian Child(ren), NAA 210, Notification of Court Proceeding, MDHHS-5598, American Indian/Alaska Native (AI/AN) Child Tribal Enrollment/Eligibility Verification form, and DHS-120, American Indian/Alaska Native (AI/AN) Court Notification form.

**Safety Planning
and Petitioning the
Court**

When petitioning court for removal, the caseworker must contact the Indian child's tribe to request cooperation in trying to maintain the Indian child in the home before scheduling a case conference or FTM. If the Indian child would be at risk of harm in the home, then a case conference or FTM must be scheduled.

Before petitioning the court to request removal of an Indian child, determine if a voluntary safety plan can be developed by evaluating:

- The types of services or supports that are currently in place that ensure the child's safety at home while the family addresses safety factors that necessitated MDHHS involvement.
- If there are reliable individuals, such as extended family members, teachers, therapists, or school counselors, who have contact with the Indian child on a regular basis and can monitor his or her safety.
- Any additional culturally appropriate services or supports that can be provided to ensure the child's safety.

If petitioning the court for the removal of an Indian child, the caseworker must document that active efforts:

- Were made to provide remedial and rehabilitative services designed to prevent the breakup of the Indian family, **and**
- Were unsuccessful (see NAA 210, Notification of Court Proceeding).

Exception: When an Indian child is in imminent danger of physical damage or harm (see NAA 235, Emergency Placement).

Active Efforts

Contact a child's tribe within **three calendar days** upon assignment of a child welfare case involving court action.

MIFPA (MCL 712B. 1 - 41) and the BIA ICWA Final Rule (25 CFR 23) define active efforts for Indian child welfare cases as administered by the department or contracted services for placement agency foster care (PAFC) for the state of Michigan, see NAA Glossary.

Active efforts, as defined must be provided.

1. Prior to filing a petition in a child custody matter for an Indian child, the active efforts must provide remedial and rehabilitative programs designed to reunify the family.
2. The caseworker must take a proactive approach with clients and actively support them in complying with the service plan.
3. All services, programs and caseworker efforts provided to meet ICWA/MIFPA active efforts requirement must be documented and shown to have failed prior to filing a petition in a child custody proceeding.

Exception: See NAA 235, Emergency Placement, when an Indian child is in imminent danger of physical damage or harm.

4. Indian youth 12 years or older, as developmentally appropriate, must be engaged to solicit their preferences in placement recommendations.

**Case
Conferencing/
Family Team
Meeting**

The case conference and FTM documentation must reflect that active efforts were made by the caseworker to maintain the Indian child in the home. If the purpose of the case conference or FTM is to recommend placement of the Indian child outside the home and no representative from the Indian child's tribe attend, contact the tribe to notify of the case conference or FTM results and of any scheduled court proceeding. The caseworker must send a DHS-120, American Indian/Alaska Native (AI/AN) Child Case Notification and attach the MDHHS-5598 American Indian/Alaska Native (AI/AN) Child Tribal Enrollment/Eligibility Verification form, to

provide notice of the court proceeding; see [NAA 210, Notification of Court Proceeding](#).

**Requesting
Qualified Expert
Witness (QEW)
Testimony**

Caseworkers must contact the tribe's ICWA Designated Tribal Agent or the tribal representative for the child identified by the tribe at engagement to obtain a QEW recommendation when a child custody proceeding is imminent or expected; see NAA 200, Identification of Indian Child(ren).

Return Home

If the issues that placed the Indian child at risk of harm are resolved, the caseworker must recommend the Indian child's immediate return to the home. For juvenile justice case see NAA 500, Juvenile Justice for Indian Child(ren).

CASE RECORD

Once an Indian child is placed under the care and supervision of the department, active efforts must continue and be documented in the services plan and MiSACWIS as follows:

- Children's protective services in the case narrative.
- Foster care in the reasonable efforts section.
- Juvenile Justice in the reasonable efforts section.
- MiSACWIS in the Add ICWA Details page of the Personal ICWA History for each child welfare case (Children's Protective Services, Foster Care, Adoption, Juvenile Justice, and Guardianship).

**Proof of Tribal
Membership/
Enrollment**

If the family has a membership card or verification of tribal enrollment, take a photocopy of the tribal enrollment or identification numbers and upload it in the legal sections of MiSACWIS. Also, document and link tribal affiliation records in the Personal ICWA history Add ICWA Details page(s).

Tribal Custody

If the tribe takes custody of the Indian child, document the acceptance and transfer of custody in MiSACWIS ICWA Details. If provided, file the written verification of the tribe's authority and acceptance of custody in the legal section of MiSACWIS. Transfer forms must also be documented and linked in the Personal ICWA history Add ICWA Details page(s); see [NAA 315, Transfer to Tribal Agency](#), and DHS-120B.

**Timeframes for
Response to
Request for
Records**

The caseworker must provide an Indian child's tribe that is a party to a case or the Midwest Bureau of Indian Affairs (as designated for Michigan by the Secretary of the Interior) all records for every child in all custody proceedings within **seven** calendar days of a request according to PSM 717-4 - 717-6, and SRM 131 (MCL 712B.11).

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Child Protection Law, 1975 PA 238, as amended; MCL 722.621 et seq.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

OVERVIEW

This policy item is intended to guide collaboration with the tribe(s) when a petition has or will be filed, and a child listed on the petition is or may be an Indian child.

Steps and guidance outlined in this item pertain to child custody proceedings/petitions where the child is a member of or may be eligible for membership or citizenship in a U.S. federally recognized Indian tribe and a petition is (or will be) filed for any of the following case types (25 USC 1903(4) and MCL 712B1-41):

- Children's protective services (CPS).
- In-home placement.
- Foster care placement.
- Out of home placement.
- Dual ward.
- Interstate Compact for the Placement of Children (ICPC).
- New dependency under probate code.
- Ongoing foster care placement.
- Juvenile guardianship placement.
- Pre-adoption and adoption placement.
- Juvenile justice (JJ) placement (status offense).
- Guardianship or Limited Guardianship placement (Estates and Protected Individuals Code [EPIC]).

DEFINITIONS

Active efforts

Actions to provide services and programs designed to prevent the breakup of an Indian family and to reunify an Indian child with the Indian family. Active efforts require more than a referral to a service without actively engaging the Indian child and family (MCL 712B.3(a)); for more information see [NAG, Glossary](#).

Qualified expert witness (QEW)

A person who provides testimony and meets one or both of the following criteria (MCL 712B.17):

- A member of the Indian child's tribe or witness approved by the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs and how the tribal customs pertain to family organization and child-rearing practices.

- A person with knowledge, skill, experience, training, or education who can speak to the Indian child's tribe and its customs and how the tribal customs pertain to family organization and child-rearing practices.

VERIFICATION TIMEFRAMES

Case managers must verify if a child on a child welfare case is an Indian child. Steps to identify and verify an Indian child are detailed in [NAA 200, Identification of Indian Child](#). Identification of an Indian child should occur at the earliest point possible but within **three**-business days of a reason to know a child may be an Indian child and there is reasonable belief that the child has been or is at risk of child abuse and/or neglect. This is particularly crucial in cases where the department initiates a child custody proceeding/files a petition in court.

Case managers must make efforts to contact, notify, and collaborate with an Indian child's tribe(s) when there is an Indian child on a child welfare case. When filing a petition, if verification has not already been completed, case managers must send notice and seek to obtain verification immediately. If verification has been sought and a response has not been received from the tribe(s), case managers must continue to make active efforts and seek verification. For information on active efforts, see [NAG Glossary](#).

Case managers must involve the tribe at the earliest point possible in person, by email, phone, mail or fax; see [CPS Investigation Flow Chart](#) and [NAA 200, Identification of Indian Child](#).

NOTICE

For any child custody proceeding involving an Indian child or potential Indian child, the following forms and documents must be sent to the child's tribe at the earliest point possible but within three-business days of initiating a child custody proceeding/petition in court:

- The [DHS-120, American Indian/Alaska Native \(AI/AN\) Court Hearing Notification](#).
- The [MDHHS-5598, American Indian/Alaska Native \(AI/AN\) Child/Parent Tribal Enrollment/Eligibility Verification](#).
- All other required notice attachments, including (petition, mailing recipient contact information, etc.).

All forms and documents must be sent in accordance with [SRM 131, Confidentiality](#) policy, **by registered mail with return receipt** for each such child custody proceeding (25 CFR 23.111).

For more information on completion and dissemination of the MDHHS-5598 form; see [NAA 200, Identification of an Indian Child](#).

Due to time constraints, in an emergency proceeding the case manager must make attempts to contact and provide notice to all involved parties, including the tribe, by phone, email, or in person; see [NAA 235, Emergency Placement](#).

For all other hearings and proceedings, after the initial court hearing, the parent(s) or Indian custodian(s) and the child's tribe or Secretary of the Interior must receive the notice at least **10-calendar days before** the date of the hearing. A copy of the DHS-120, MDHHS-5598, other required notice attachments, and return receipt must be filed in the Indian child's electronic case record **and with the court of jurisdiction for the child's court case file**. Failure to complete proper notice may jeopardize and nullify the court proceedings.

No Response from Tribe(s) - Tribal Notice

If a tribe does not respond to the notice forms and documents (DHS-120, MDHHS-5598, petition, etc.) or subsequent follow up contact (phone calls, email, in-person, faxed inquiries, etc.), active efforts and implementation of the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) requirements, including active efforts and continued attempts to verify tribal affiliation, must continue until a court states that a child is not an Indian child. All efforts must be documented. For more information on required efforts when there is no response; see [NAA 200, Identification of an Indian Child](#).

TRIBAL INTERVENTION

An Indian child's tribe has the legal right to intervene at any point in all child custody proceedings regarding the child. A tribal representative may intervene through a written motion to the court or by written or verbal statement to the court that the tribe wishes to intervene or participate (25 CFR 23.11(a); 25 CFR 23.111(6)(iii); MCL 712B.7(6), (7)).

Note: A tribe is a party to a child custody proceeding once the tribe has intervened.

A case manager must provide a tribe that has intervened all documents that have or will be provided to the court within a reasonable time to review prior to the hearing. MDHHS must provide a tribe that has formally intervened any report that is being provided to the court in the same form; for example, if information in the report provided to the court is not redacted, do not redact the report provided to the tribe (25 USC 1912(c); 25 CFR 23.134; MCL 712B.11).

DOCUMENTATION

Case managers must state in petitions, service plans and court reports what active efforts were made and how they were offered/provided to prevent the breakup of an Indian family; see [NAA 205, Indian Child Welfare Case Management](#) and [MDHHS Pub 112 - State of Michigan ICWA/MIFPA Active Efforts & Petition Writing Job Aid](#).

The case manager must request through the department attorney at the hearing/court proceeding that the court place the required documents and return receipt(s) in the child's court case file.

The following documents must be filed ***with the court of jurisdiction for the child's court case file:***

- A copy of the DHS-120.
- MDHHS-5598.
- Other required notice attachments.
- The return mail receipt(s).

Qualified Expert Witness (QEW) Testimony

It is the petitioner's (MDHHS and Placement Agency Foster Care [PAFC] providers) duty to secure a qualified expert witness (QEW).

QEW testimony is required to meet the petitioner's burden of proof. A QEW testifies for the following circumstances:

- For an involuntary placement.
- For a termination of parental rights proceeding.

A QEW testifies to the child-rearing practices of the child's tribe and whether continued custody of the child with respective parent(s) or

Indian custodian(s) is likely to result in serious emotional or physical harm to the child. Courts may, but are not required to, also ask a QEW if active efforts were made as applicable to their expertise and case involvement (MCR3.967).

Case managers should contact an ICWA Designated Tribal Agent from the child's tribe for QEW recommendations. Efforts must be made to assist the QEW with preparation for the court hearing.

DOCUMENTATION

Case managers must upload all documentation provided to or received from the tribe, including registered mail receipts, to the child's electronic case record.

The case manager must document all successful or attempted contacts made related to identification of an Indian child, verification of the child's eligibility or membership/citizenship in a federally recognized tribe, or to provide notification of a child protective proceeding involving and Indian child in social work contacts in the child's electronic case record.

The case manager must document all active efforts made in the child's electronic case record (MCL 712B.3).

CONTACT

For more information about this policy contact MDHHS-NativeAmericanAffairs@michigan.gov

**FOSTER CARE
PLACEMENT OR
PRE-ADOPTIVE
PLACEMENT**

Any Indian child referred for foster care (this includes a juvenile justice ward) or adoption must be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, will be met. The child must also be placed within reasonable proximity to his or her home, taking into account any special needs of the child.

Absent tribal law, regulation, or resolution by the child's tribe, the placement should meet the prevailing social and cultural standards of the Indian community in which the parent(s) or extended family resides, or with which the parent(s) or extended family members maintain social and cultural ties.

The caseworker must work in collaboration with the child's tribe regarding foster care or pre-adoptive placement. If the placement preferences listed below cannot be met, the caseworker must ask the child's tribe for assistance in locating an appropriate placement.

**FOSTER CARE
PLACEMENT
PREFERENCE**

The order of foster care placement preference is as follows, unless the Indian child's tribe has a different preference, or the court determines there is good cause for a different order of preference (MCL 712B.23(1) & (6) and 25 CFR 23.131):

- A member of the Indian child's extended family.
- A foster home approved, licensed or specified by the Indian child's tribe.
- An Indian foster home approved by the department.
- A child caring institution approved by an Indian tribe, or operated by an Indian organization that has a program to meet the Indian child's needs.

If a tribal family contacts the department pertaining to placement consideration for a case at any time other than initial placement search the family must be considered; see DHS-588 and Diligent Search section on page 3 of 5.

**ADOPTIVE
PLACEMENT
PREFERENCE**

Unless a tribe has tribal law, regulation, or resolution to deviate from the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) placement preferences; or the court finds good cause to deviate from placement preferences, the order of adoptive placement preference is as follows (MCL 712B.23(2) & (6) and 25 CFR 23.130):

- A member of the Indian child's extended family.
- Other members of the Indian child's tribe.
- Other Indian families.

When recommending deviation from placement preference, the caseworker must demonstrate good cause **not** to follow the order of preference, and the adoptive placement preference must be based on reasons found in the BIA ICWA Final Rule, 25 CFR 23.132. Only the court may determine good cause to **not** follow the order of preferences.

Youth 12 years or older, as developmentally appropriate, must be engaged to solicit their preferences in placement recommendations.

Documentation of each placement of an Indian child must be maintained evidencing the efforts to comply with the order of placement priorities in MiSACWIS Personal History ICWA Details page(s).

Permanency Planning

In Indian child welfare, permanency also means maintaining ties with extended family and tribe; see also FOM 722-7, Permanency Planning and NAA 245 Permanency Planning.

**REPLACEMENT OF
INDIAN CHILD(REN)
IN FOSTER CARE
OR PRE-ADOPTION
PLACEMENTS**

Replacement of an Indian child in temporary foster care (this includes a juvenile justice ward) or pre-adoptive placement must follow the established ICWA/MIFPA placement preferences. The

policy of least restrictive setting appropriate to the Indian child's needs must also be followed, unless the Indian child is returned to the parent(s) or Indian custodian(s) from whose custody the Indian child was originally removed.

The caseworker must work in collaboration with the child's tribe regarding foster care or pre-adoptive replacements.

Replacement Hearing Notification

The caseworker must notify the parent(s) or Indian custodian(s) and the tribe, of any hearing to change placement; see [NAA 210 Notification of Court Proceeding](#).

DILIGENT SEARCH

An Indian child placement agency or tribal facility/institution may be contacted to help caseworkers and tribes identify Indian placement options after previous Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) placement preferences are eliminated from consideration.

Furthermore, other placement agency foster care (PAFC) agencies may have Indian homes available through their agency which would be considered a placement preference as well.

Caseworkers may contact Native American Affairs (NAA) or visit the [MDHHS Native American Affairs website](#) for a MDHHS American Indian/Alaska Native foster care home list, tribally licensed foster home list; or a tribal PAFC, detention facility, or group home listing to assist with placement of Indian children in an Indian home if a family or child's tribe does not have a home available or suitable to meet the needs of the child.

ANONYMITY

If a consenting parent desires anonymity, the court and agency must take steps to keep information related to the parent confidential and sealed from disclosure; it does not preclude notice responsibility or compliance with ICWA/MIFPA to the tribe.

**GOOD CAUSE TO
DEPART FROM
PLACEMENT
PREFERENCES**

If any party in a child-custody proceeding (MDHHS or placement agency foster care [PAFC] caseworker, tribe, child, parent, or Indian custodian) asserts that good cause to not follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding, and the court.

The party seeking departure from the placement preferences must prove by clear and convincing evidence that there is "good cause" to depart from the placement preferences.

If a caseworker is recommending good cause to depart from ICWA/MIFPA placement preferences to the court, they must be made on the record or in writing and should be based on one or more of the following considerations:

1. The request of one or both the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
2. The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
3. The presence of a sibling attachment that can be maintained only through a particular placement;
4. The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;
5. The unavailability of suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parents or extended family members maintain social and cultural ties.

A placement may not depart from the preferences based on the socioeconomic status of any placement preference compared to another placement option.

A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made contrary to ICWA/MIFPA; see Bureau of Indian Affairs (BIA) ICWA Final Rule Section 23.132.

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

**DESCENDANT
CHILDREN AND
FAMILIES**

If the tribe determines that the child is a descendent, caseworkers should consult the Tribal Agreement Manual for ICWA/MIFPA agreements with tribes that include descendant child(ren) and family service provisions (For example: Saginaw Chippewa Indian Tribe ICWA Agreement).

DHS-121a American Indian/Alaska Native Descendant Child Welfare Case Notification (Decline or Client Referral)

For families in which the MDHHS 5598/DHS-120 are returned with a response that the family is not eligible for membership, however, the family/child are recognized as descendant(s) of the tribe, the DHS-121a, American Indian/Alaska Native Descendant Child Welfare Case Notification (Client Referral) form, should be sent to the respective tribe indicating client request for tribal services along with case referral information or declined tribal services as applicable.

The DHS-121a must be scanned/logged into the MiSACWIS case record and case contacts/narrative.

If a descendant family declines tribal services at the onset of the case, caseworkers must obtain case management recommendations from the respective tribe without disclosing confidential case identifying information.

**Culturally
Appropriate
Services**

Caseworkers should consult with local Michigan tribes and urban Indian organizations regarding recommended programs for assistance and examples of protocol that have demonstrated success with state historic and descendent child case scenarios (see NAA 610, Federally Recognized Tribes Located in Michigan for other culturally appropriate services).

Federal ICWA guidelines do not apply to state historic and descendent families found in many counties, especially urban areas, unless the department has a tribal agreement authorizing service provisions. *In these cases*, courts may order culturally appropriate services, policy, and procedures for state historic and

descendent tribal clients; however, *these families are not covered by ICWA/MIFPA.*

Caseworkers may utilize the [BIA Guidelines for State Courts and Agencies for Indian Child Custody Proceedings](#) as a means of providing culturally competent services for state historic and descendent children and families.

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Child Protection Law, MCL 727.627.7

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

**VOLUNTARY
FOSTER CARE
PLACEMENT**

As used in Michigan, voluntary foster care means placement of a child in which the parent can have the child returned upon a verbal request/demand, without any express or implied formalities or contingencies and where the court is not involved.

In these circumstances, the Indian Child Welfare Act (ICWA) does not apply because the parent or Indian custodian is not involved in a child protection proceeding and "either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, chosen for the Indian child and that does not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand." 25 CFR 23.103(b)(4).

***In contrast, ICWA applies to any foster care placement, voluntary or otherwise, if the Indian child is the subject of a "voluntary [court] proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand." 25 CFR 23.103(a)(1)(ii).

Workers must complete the MDHHS 5598 form for voluntary foster care cases involving an Indian child; see [NAA 200, Identification of An Indian Child](#).

Caseworkers may recommend voluntary foster care placements for Indian children under limited situations and when the regular caregiver(s) is absent on a short-term basis (not to exceed 180 days) from their childcare role for reasons beyond their control; see [FOM 722-01, Entry into Foster Care](#).

Acceptable situations for voluntary foster care include:

- Hospitalization.
- Incarceration.
- Residential Treatment.
- Another situation beyond the parent's control determined on an individual basis.

The DHS-3813, Request for Assistance/Voluntary Foster Care may be used to document the written agreement.

Voluntary Foster Care Placement Evaluation

When exploring voluntary foster care placement, the caseworker must evaluate the following:

- Is the parent(s), guardian(s) or Indian custodian(s) willing to place the Indian child voluntarily?
- Is there indication that the parent(s), guardian(s), or Indian custodian(s) will follow the terms of the voluntary foster care agreement?
- Is it likely that the parent(s), guardian(s), or Indian custodian(s) will be able to resolve the issue or circumstance leading to the need for the Indian child's voluntary foster care placement for less than 180 days?

If the answer to **any** of the above questions is **no**, then voluntary foster care placement should **not** be used.

Voluntary foster care placement is also not appropriate for an Indian child if:

- The Indian child is a resident or domiciled on an Indian reservation.
- The Indian child is a ward of the tribal court.
- There is a tribe or an Indian cultural/services center that may have human resources available to assist the Indian child and the family that would eliminate the need for a voluntary foster care placement.
- No efforts have been made to explore alternatives to foster care placement, including placement with the other parent.

If the non-custodial parent is appropriate and able to care for the Indian child, every effort should be made to locate and notify that parent of the possible foster care placement before accepting a voluntary foster care placement consent.

- The family is not in full agreement and motivated to cooperate.

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Indian Child Welfare Act, 25 USC 1913.

Michigan Indian Family Preservation Act, MCL 712B.1 - 41.

Estates and Protected Individuals Code, MCL 700.5103.

JURISDICTION**Indian Child ON
Reservation**

A complaint of suspected child abuse or neglect of any Indian child **who resides or is domiciled on lands within exclusive jurisdiction of the tribe** must **not** be investigated by the department unless a special written agreement exists between the tribe and the department. These agreements exist between MDHHS and the Sault Ste. Marie Tribe of Chippewa Indians, the Keweenaw Bay Indian Community, and the Lac Vieux Desert Band of Lake Superior Chippewa Indians; see Tribal Agreement Manual (TAM) for tribal agreements.

Tribal Jurisdiction

If an Indian child resides on a reservation, where the tribal court has jurisdiction, MDHHS or the Family Division of Circuit Court may not intervene unless there is a special written services agreement between the tribe and MDHHS. See the Tribal Agreements Manual (TAM) for tribal agreements.

Caseworkers must contact the tribal social service department to verify tribal jurisdiction on a case. If there is a disagreement regarding tribal jurisdiction, caseworkers must contact the Office of Native American Affairs for clarification or dispute resolution per tribal consultation plan agreement(s).

**Indian Child OFF
Reservation**

An assigned complaint of suspected child abuse or neglect involving any Indian child **who resides off the reservation** requires the department to investigate.

**RELEASE OF
CHILDREN'S
PROTECTIVE
SERVICES (CPS)
INFORMATION**

MDHHS may release a report, document, or photograph filed with the Department as part of a child's confidential CPS record to a *tribal representative, agency, or organization, including a*

multidisciplinary team, authorized by the Indian child's tribe, to care for, diagnose, treat, review, evaluate, or monitor active efforts regarding an Indian child, parent, or Indian custodian (MCL 722.627.7).

Upon verbal or written request, reports and documents that have been completed and approved by supervision should be released in accordance with SRM 131 and PSM 717-4 - 717-6; including verification of the identity of the requestor, proper redactions, inclusion of state of confidentiality, etc. In cases in which record release is not requested, the change to the Child Protection Law (CPL) also allows CPS to speak with an involved tribal representative about the CPS matter to identify available services, obtain active efforts recommendations, and collaborate to assist the family; see MDHHS-5598, American Indian/Alaska Native (AIAN) Child Tribal Enrollment/Eligibility form.

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Child Protection Law, 1975 PA 238, as amended; MCL 722.621 et seq.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

EMERGENCY REMOVAL OF AN INDIAN CHILD

If an Indian child is in danger of imminent physical damage or harm, the Michigan Department of Health and Human Services (MDHHS) must provide emergency intervention to ensure the child's safety, including emergency placement; MCL 712B. 7(2).

Case Conference or Family Team Meeting (FTM)

The caseworker must invite the designated ICWA Indian agent/tribal caseworker to a case conference or FTM. A case conference or Family Team Meeting (FTM) must be held within **two** working days of an emergency placement.

TERMINATION OF EMERGENCY PLACEMENT

The emergency removal or placement must end immediately when no longer necessary to prevent imminent physical damage or harm to the Indian child. A child custody proceeding must be initiated immediately to transfer the Indian child to the jurisdiction of the appropriate Indian tribe, or restore the Indian child to the parent or Indian custodian, if appropriate.

An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:

- (1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
- (2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and
- (3) It has not been possible to initiate a "child-custody proceeding" as defined in 25 CFR 23.2.

Continued emergency placement of an Indian child must be supported by clear and convincing evidence. There must be testimony from at least one qualified expert witness (QEW) that custody of the Indian child by the parent or Indian custodian is likely to result serious physical damage or harm to the Indian child; and active

efforts were provided to the family and were unsuccessful. MDHHS must document the efforts made to place the Indian child using the placement priorities during the emergency placement period; see also NAA 215, Placement/Replacement Priorities for Indian Child(ren); see MCL 712B.15(2) and MCL 712B.5.

If an Indian child is charged with a status offense, the Indian child must not be removed from a parent or Indian custodian unless the removal is to prevent imminent physical damage or harm to the Indian child; see also NAA 500, Juvenile Justice for Indian Child(ren).

**Qualified Expert
Witness (QEW)**

In a continued emergency placement, caseworkers must obtain a QEW when a child custody proceeding is imminent or expected; see NAA 205 & 210.

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

**PERMANENCY
PLANNING GOALS**

A permanency planning goal for each Indian child must be documented within each service plan. This goal is the intended outcome of the caseworker's active efforts to move the Indian child from temporary placement to permanent placement. There may be interim goals that are necessary to achieve the ultimate goal of permanence; see FOM 722-7, Permanency Planning Goals.

The objective of the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) is to provide a child with the opportunity to maintain tribal connections. Tribes may have preferred living arrangements and caseworkers should confer and collaborate with the Indian child's tribe to determine any placement priority and permanency goal.

Caseworkers should seek to maintain the tribal connections through ICWA/MIFPA placement preferences and obtain input with family, tribe, and other community supports (For example: urban Indian organizations, tribal service providers, and Indian Outreach Services); see NAA 215 Placement/Replacement Priorities for Indian Children.

Case Record

The permanency planning goal listed in the service plan must match the goal that is coded in the Michigan Statewide Automated Child Welfare Information System (MISACWIS) and for Juvenile Justice. The appropriateness of the goal depends primarily upon whether the Indian child is a temporary or permanent ward, and the individual circumstances of the case, including the determination of the applicability of ICWA/MIFPA.

**CONCURRENT
PERMANENCY
PLANNING**

In cases involving an Indian child who is a member of or eligible for membership in a federally recognized tribe, tribal government will be involved in all aspects of case planning, placement and interventions. In these situations, sequential planning rather than concurrent planning may be the process of choice.

As soon as affiliation in an Indian tribe is identified, the tribe must be included in permanency planning.

All permanency planning recommendations will be made in consultation with the tribe for foster families who have or declare tribal membership or Native American heritage. If the child's tribal family wants to be considered for placement at a later date, the caseworker must assess the family that comes forward for placement.

**PERMANENCY
HEARING PLANNING
Compelling
Reasons for a
Permanency Plan
other than Return
Home**

When an Indian parent is making progress towards reunification by the time of the 12-month hearing, it may be appropriate to continue reunification as the permanency goal. If a parent has made no progress in the 12-month period, a permanency plan other than termination of parental rights/return home must be presented to the court or documentation of compelling reasons why termination petition should not be filed.

The following reasons may be used as a compelling reason for a permanency goal other than termination of parental rights/return home for Indian children and documented in the service plan and uploaded into the MiSACWIS ICWA Personal History:

- The Indian child is placed with a member of the Indian child's extended family as defined in policy.
- Active efforts were not provided.
- The active efforts that were provided have not failed.
- The tribe or supervising agency has identified a different permanency goal to be in the best interest of the Indian child (i.e., not supporting a petition for termination of parental rights).
- ICWA/MIFPA specific legal standards applicable to termination of parental rights, evidence beyond a reasonable doubt, has not been met.
- Parent(s) are making substantial progress in treating a substance/alcohol abuse problem and continued progress

could allow future reunification without endangering the Indian child.

- There is no qualified expert witness testimony that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, as required by ICWA/MIFPA.

Integration of ASFA and the ICWA (APPLA)

Another Planned Permanent Living Arrangement (APPLA)

If, after active efforts, the Indian child age 16 years or older cannot be safely returned to the parents or Indian custodian within 12 months after removal, the caseworker must develop another planned permanent living arrangement (APPLA). The APPLA must be developed in collaboration with the Indian child's tribe, the parents and extended family members. The caseworker must document when the tribe declines to collaborate in the case plan. If a tribe declines, the caseworker should continue to invite the tribe to assist in the identification of APPLA for the Indian child.

If it is concluded that (after considering reunification, adoption, guardianship or permanent placement with a fit and willing relative) the most appropriate permanency plan for an Indian child is APPLA, the compelling reasons for this decision must be documented in the updated service plan (USP). These compelling reasons must detail why none of the other goals are in the child's best interest.

Compelling Reasons for APPLA

Examples of compelling reasons for APPLA may include, but are not limited to, the tribe's identification of APPLA for the Indian child who is at least age 16 and who opposes termination of parental rights and adoption.

ADOPTION PERMANENCY PLANNING

When considering whether adoption is the most appropriate permanency plan, evaluate the following factors:

- Does the Indian child's tribe have long-standing social and cultural objections to termination of parental rights? Is adoption recognized by the tribe?
- If termination and adoption are opposed by the tribe, is there an alternative permanent placement available with extended family or other tribal member which will provide comparable stability for the Indian child?
- If a placement within the Indian child's tribe cannot be identified, what efforts have been made to identify an adoptive placement not belonging to the tribe, including a non-Indian family?
- If a placement within the Indian child's tribe cannot be identified, have efforts been made to obtain the tribe's support for an **alternative** adoptive placement within the placement preference order?
- Has the Indian child expressed an objection to termination and adoption?
- If the Indian child's parent(s) expressed a placement preference, what efforts have been made to choose a placement that accommodates their wishes (25 CFR 23.132)?

ADULT SUPPORT SYSTEM

If it appears that an Indian child may not have a legal relationship with an adult when leaving the child welfare system, the caseworker must assist the Indian youth to develop an adult support system; see [FOM 722-3C, Older Youth, Preparation, Placement and Discharge](#) and [FOM 722-7F, Permanency Planning - Permanent Placement with a Fit and Willing Relative \(PPFWR\) and Another Planned Permanent Living Arrangement \(APPLA\)](#).

Indian youth under care and supervision of the department, placement agency foster care, and/or tribe may access the young adult voluntary foster care program (YAVFC), Youth in Transition (YIT), Michigan Youth Opportunities Initiative (MYOI), and education and training voucher (ETV) programming; see NAA 415, TAM, [FOM 722-16 Young Adult Voluntary Foster Care](#), [FOM 950 Youth In Transition](#), and [FOM 960 Educational and Training Voucher](#).

LEGAL BASIS

Adoption and Safe Families Act, 42 USC 601 et seq.

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

OVERVIEW

This policy item includes guidance for when termination of parental rights is being considered or has been filed and the case involves an Indian child. In these situations, the case manager must assess cases to ensure:

- Criteria to seek termination of parental rights have been met.
- Testimony by a qualified expert witness (QEW) is secured.
- The case file contains proper documentation.

This policy item details these requirements as well as considerations for voluntary consent of termination of parental rights.

**EXCEPTIONS TO
REQUIREMENTS TO
FILE TERMINATION
PETITION**

A determination not to seek termination of parental rights may be appropriate if one or more of the following exceptions exists:

- A relative is caring for the child.
- A compelling reason has been documented that the termination of parental rights would not be in the best interest of a child.
 - The Indian child's tribe's support for a different permanency goal or the tribe's lack of support of the termination of parental rights may be compelling reasons.
- Active efforts to prevent the breakup of the Indian family and reunify the Indian family have not been made. (MCL 712B.3(a) and MCL 712B.15(3)).
- There is not sufficient information/evidence for a judge/court to determine beyond a reasonable doubt, with testimony supported and provided by a QEW, that serious emotional or physical harm is likely to occur.

For information on terms such as active efforts and qualified expert witness see [NAG Glossary, Native American Affairs Glossary](#).

**REQUIREMENTS TO
TERMINATE
PARENTAL RIGHTS
(TPR)**

TPR may not be ordered without a court determination that all the following are true:

- Evidence, including testimony of a QEW, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical harm to the Indian child; and
- Active efforts were provided with culturally appropriate remedial and rehabilitative services designed to reunify the family; and
- Active efforts failed to remedy the concerns that required court intervention for the Indian family (25 CFR 23.120-122).

See [NAG Glossary, Native American Affairs Glossary](#) for more information on active efforts.

**Qualified Expert
Witness (QEW)**

The termination hearing must include testimony from a QEW that the continued custody of the Indian child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical harm to the Indian child; see [NAA 210, Notification of Court Proceeding](#) (MCL 712B.15(4)).

QEWs may need to be subpoenaed to testify. This may take additional time as some tribes require state court subpoenas to be recognized by the tribal court before they are enforceable. Additional time may be needed to secure and subpoena a QEW, and have the subpoena reviewed by the tribal court.

**Notice of Hearing
to Terminate
Parental Rights**

The case manager must send the [DHS-120, American Indian/Alaska Native \(AI/AN\) Child Case Notification](#), and [MDHHS-5598, American Indian/Alaska Native \(AI/AN\) Child Tribal Enrollment/Eligibility Verification](#); and all other required notice

attachments (petition, mailing recipient contact list, etc.) **by registered mail with return receipt to:**

- The [ICWA Designated Tribal Agent](#) for the child's tribe, if known.
- The tribe(s) located in the county where the Indian child is located.
- The Midwest Bureau of Indian Affairs.

See [NAA 200, Identification of an Indian Child](#), and [NAA 210, Notification of Court Proceeding](#).

Standard of Promptness (SOP)

Notification of hearing to terminate parental rights must be **received** by all the required parties on the DHS-120 at least **10-calendar days** before the hearing date.

Note: Failure to complete proper notice may jeopardize and nullify the court proceedings.

Documentation

Case managers must:

- Upload a copy of the DHS-120, MDHHS-5598, other required notice attachments, and return receipt in the child's MDHHS case record.
- Update the child's ICWA details in the MDHHS electronic case record accordingly.
- File the DHS-120, MDHHS-5598, and other required documents or attachments with the court of jurisdiction for the child's court case file.

See [NAA 210, Notification of Court Proceeding](#), for more information.

VOLUNTARY CONSENT TO TERMINATION OF PARENTAL RIGHTS

Case managers must upload completed court forms [PCA 305-I, Release of Indian Child, by Parent](#) and [PCA 308-I Consent by](#)

[Parent to Adoption of Indian Child](#) in the child's MDHHS case record for cases involving a voluntary consent to release parental rights of an Indian child (MCL 712B.13).

Withdrawal of Voluntary Consent to Release

The parent's voluntary consent to release parental rights may be withdrawn for any reason at any time before the entry of a final decree of termination or adoption, and the Indian child must be returned to the parent(s) to the status prior to release or consent (MCL 712B.13(3-4) and (6)).

Note: A safety assessment must be completed prior to returning a child to a parent or Indian custodian; see [PSM 713-11, Assessments](#), and [FOM 722-09C, Safety Assessment](#).

CONTACT

For more information about this policy contact MDHHS-NativeAmericanAffairs@michigan.gov

OVERVIEW

The policy item explains funding requirements and reimbursement for an Indian child under title IV-E funding, the tribal child care fund (CCF), and foster care payments.

TITLE IV-E FUNDING

All eligibility and judicial findings requirements as outlined in [FOM 902, Funding Determinations and Title IV-E Eligibility](#), must be met for Title IV-E funding.

PAYMENT

Payment for allowable expenditures to the tribe is handled in the same manner as payment to the counties under the county CCF provisions in [SRF 904, Child Care Fund Handbook Published Policies and Business Processes](#).

**Annual Plan and
Budget**

The Annual Plan and Budget (AP&B) for the tribal CCF and payment must be renewed annually. Complete budgets are due by August 15 each year and are submitted in the MDHHS electronic case management system; see [SRF 904, Child Care Fund Handbook Published Policies and Business Processes](#).

**FOSTER CARE
PAYMENT FOR
INDIAN CHILDREN**

An Indian child under jurisdiction of a state or tribal court who is referred or committed to MDHHS is funded in the same manner as any other Michigan child in foster care. This includes payment related to adoption, the child care development fund (CDC), and juvenile guardianship assistance, or in accordance with any MDHHS policy and/or agreement such as, tribal/state title IV-E agreement.

**Tribal Case
Funding**

Federal and state funding laws and/or tribal agreements apply to Indian Child Welfare Act/Michigan Indian Family Preservation Act (ICWA/MIFPA) and juvenile justice Indian child cases.

Case managers should consult foster care policy to assist with funding clarifications as necessary for case management and tribal

reviews/transfers; see [FOM 901-9 Payment Source Guide](#), [FOM 901-6 Legal Status](#), and [FOM 901-7 Service Type and Living Arrangements](#).

AMERICAN INDIAN CHILD ADMINISTRATIVE RATE

There is an American Indian child administrative rate for placement agency foster care (PAFC) for an Indian child welfare case. Case managers and/or PAFC staff may contact Native American Affairs or the local MDHHS office for further assistance with American Indian child administrative rate processing; see [FOM 903-4, Purchased Care Payment Procedures](#).

CONTACT

For more information about this policy contact MDHHS-NativeAmericanAffairs@michigan.gov

ON OR NEAR AN
INDIAN
RESERVATION

Tribal foster homes **on or near** an Indian reservation may be licensed or approved based on tribal criteria (25 USC 1931 and 25 CFR 20.100). Authorized payment to the child placing agency or tribe occurs in the same manner as payment authorized by any other licensed child placing agency with which the Michigan Department of Health and Human Services (MDHHS) has a purchase of service contract; see NAA 300, Division of Child Welfare Licensing (DCWL) Foster Care Provider Payment Handbook and policy, and Children's Services Agency Rates for Child Care Institutions and Placing Agencies policy and Juvenile Justice.

Caseworkers should utilize the Native American Affairs Tribal Service Area Map to determine if a foster home has potential to be under tribal jurisdiction; see [Tribal Service Area Map at http://www.michigan.gov/documents/dhs/NAA-Tribal-Service-Area-Map_305179_7.pdf](http://www.michigan.gov/documents/dhs/NAA-Tribal-Service-Area-Map_305179_7.pdf).

Caseworkers must contact a tribal social service director/tribal court for the tribe(s) identified in their county to confirm tribal jurisdiction and/or request a tribal reservation/trust land map to verify tribal jurisdiction.

The Bureau of Indian Affairs (BIA) determines tribal reservation or trust land based upon federal tribal consultation processes with each tribe respectively (25 CFR 20.100). The State of Michigan recognizes tribes and tribal lands as determined by the BIA and/or the State Attorney General's Office.

Verifying On or Near

When a caseworker is uncertain whether a home is considered on or near an Indian reservation, a determination must be made through the office of Native American Affairs in conjunction with the Division of Child Welfare Licensing (DCWL) and the tribe. All final determinations of a home on or near an Indian reservation will be provided by the BIA and/or the State Attorney General's Office (25 CFR 20.100).

**NOT ON OR NEAR
AN INDIAN
RESERVATION**

Foster homes not on or near an Indian reservation must be licensed and assigned a state license number in accordance with the Child Care Licensing Act, MCL 722.111-722.128. Authorized payment to the child placing agency or tribe occurs in the same manner as payment authorized by any other licensed child placing agency with which MDHHS has a purchase of service contract.

**RELATIVE
LICENSING**

Relative licensure is optional for children who are Indian Children as defined by the Indian Child Welfare Act (ICWA). ICWA/MIFPA placement priorities still apply (MCL 712B. 1 - 41).

For tribal foster care homes to be eligible for Title IV-E funding all caregivers must be fingerprinted and documentation must be found in the foster home licensing file.

**INDIAN FOSTER
HOME
VERIFICATION**

Caseworkers must utilize the CWL-120A when a foster home has indicated Indian ancestry on their licensing application; see [CWL-120A](http://www.michigan.gov/documents/dhs/CWL-0120-A_498928_7.pdf) at http://www.michigan.gov/documents/dhs/CWL-0120-A_498928_7.pdf. Copies of the CWL-120A and tribal verification responses must be filed in the foster home licensing file as applicable; see NAA 300.

LEGAL BASIS

Bureau of Indian Affairs (BIA), 25 CFR 20.100-20.299.

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Child Care Licensing Act, MCL 722.111-722.128.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

OVERVIEW

This policy item provides direction for case managers when provided a tribal court order for an Indian child. Michigan Department of Health and Human Services (MDHHS) accepts valid tribal court orders in full faith and credit.

**PLACEMENT
AGENCY FOSTER
CARE (PAFC)
AND/OR TRIBAL
COURT/AGENCY
RESPONSIBILITIES**

Upon receipt, a placement agency foster care (PAFC) and/or tribal court/agency must send the placement order from the tribal court to the local MDHHS office in the county who is managing the case regardless of where the Indian child resides.

Case Management

For an Indian child, the case plan must be developed in collaboration with the child's tribe. The case manager must document the request for tribal collaboration in the child's MDHHS electronic case record and upload all court orders in the child's MDHHS electronic case management record ICWA details section.

**Discharge Orders -
Safety Concerns**

See [NAA 233, Children's Protective Services Investigations](#).

CONTACT

For more information about this policy contact MDHHS-NativeAmericanAffairs@michigan.gov

OVERVIEW

Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) cases may be transferred to a tribal court upon request of either parent or tribe unless good cause not to transfer is determined by a court. The Michigan Department of Health and Human Services (MDHHS) has established and maintains procedures for the transfer of responsibility for the placement and care of a child under Michigan's Title IV-E plan to a Tribal Title IV-E agency or an Indian Tribe with a Title IV-E agreement.

Title IV-E federal regulations apply to Indian child welfare case transfers based upon jurisdiction and/or care and supervision of child designations.

**GOOD CAUSE NOT
TO TRANSFER TO
TRIBAL
AGENCY/COURT**

Upon receipt of a transfer petition from an Indian child's parent, Indian custodian, or tribe, the state court must transfer the child-custody proceeding unless the court determines that transfer is not appropriate because one or more of the following criteria are met:

- Either parent objects to such transfer;
- The tribal court declines the transfer; or
- Good cause exists for denying the transfer,

Michigan law, MCL 712B.7(5), lists the following good cause reasons:

- The Indian tribe does not have a tribal court.
- The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to those parties or witnesses that the tribal court is unable to mitigate.

If the state court believes, or any party asserts, that good cause to deny transfer exists, the reasons must be stated on the record or provided in writing and to the parties to the child-custody proceeding. Any party to the child-custody proceeding must have the opportunity to provide the court with views regarding whether good cause to deny the transfer exists.

In determining whether good cause exists, the court may not consider:

1. Whether the foster care or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not received notice of the child-custody proceeding until an advanced stage;
2. Whether there have been prior proceedings involving the child for which no petition to transfer was filed;
3. Whether transfer could affect the placement of the child;
4. The Indian child's cultural connections with the tribe or its reservation; or
5. Socioeconomic conditions or any negative perception of tribal or Bureau of Indian Affairs (BIA) social services or judicial systems.

TRANSFER TO
TRIBAL
AGENCY/COURT
PROTOCOL

In-State Tribal
Agency/Court
Transfer with State
Tribal Title IV-E
Agreement

Prior to case transfer, caseworkers and supervisors must review the case plan, medical assistance and funding source to include any funds MDHHS is holding on behalf of the child (Social Security Income, Child Support, IV-D, trust, etc.) for each Indian child welfare case including children's protective services, foster care, adoption, juvenile justice, and juvenile guardianship with the tribal agency/court and/or tribal social service department in the respective tribe of case transfer to ensure continuity of services.

If MDHHS is not maintaining care & supervision for the transferred case, after completing transfer to tribal agency protocol utilizing the DHS-120B Transfer to Tribal Agency/Court form, the caseworker must close the case in MiSACWIS.

Case Conference or
Family Team
Meeting (FTM)

Case workers must conduct a case conference or FTM to determine where the child will be placed, who is assuming care and supervision, and to relieve the PAFC that is overseeing the youth of their responsibility including but not limited to signing an agreement with the tribe determining funding and date of enactment; see NAA 205 Case Management.

Utilize a DHS 120-B, Transfer to Tribal Agency/Court, form to assist with review and transfer. A DHS 120-B, Transfer to Tribal Agency/Court form, must be completed and scanned into the Michigan State Automated Child Welfare Information System (MiSACWIS) case file in the Personal ICWA history Add ICWA details and placement sections. Upon request from the tribe, caseworkers will forward all required documentation to the tribe.

In-State Tribal
Agency/Court
Transfer with a
Direct Title IV-E
Agreement
(Federal)

Caseworkers must implement all Transfer to Tribal Agency/Court Protocol as stated above and:

- MDHHS will establish eligibility for Title IV-E at the time of transfer, if an eligibility determination is not already completed and provide all Title IV-E funding determinations to the tribe. A DHS 352, Initial Funding Determination packet, supporting documents, Bridges screen shots must be sent to the tribe to support a Title IV-E funding determination. The transfer does not affect a child's eligibility (if order/placement meet IV-E eligibility requirements), receipt of services, or payment under Title IV-E or the medical assistance program operated under Title XIX.
- Caseworkers must provide the tribe a copy of placement history and provider license.
- If MDHHS is not maintaining care & supervision for the transferred case, the caseworker must close the case in MiSACWIS. Caseworkers must complete and utilize the DHS-

120B Transfer to Tribal Agency/Court prior to case closure in MiSACWIS.

OUT-OF-STATE
TRIBAL
AGENCY/COURT
TRANSFER

Tribal Jurisdiction, Care and Supervision of Child

Michigan negotiates with any federally-recognized American Indian tribe, tribal organization or tribal consortium that requests to develop an agreement with MDHHS to administer all or part of the Title IV-E program on behalf of American Indian children who are under the authority of the tribe, organization, or consortium. This includes Title IV-E foster care maintenance payments on behalf of children who are placed in MDHHS or tribally licensed foster family homes, adoption assistance payments, and guardianship payments and tribal access to resources for administration, training, and data collection under Title IV-E.

For out of state cases which are considered ***Tribal Court Jurisdiction Only (Michigan MDHHS Care and Supervision), Tribal Court Jurisdiction Only (Other State/PAFC Care and Supervision), or Out-of-State Tribal Agency/Court Transfer with a Direct Title IV-E Agreement (Federal)***, caseworkers must implement all Transfer to Tribal Agency/Court Protocol, establish eligibility for Title IV-E, and provide the tribe a copy of placement history and provider license.

MDHHS foster care and Title IV-E funding from the state of Michigan will be closed/stopped upon acceptance from the receiving Title IV-E tribal agency or court in order for the tribe and state to claim the Title IV-E expenditures according to federal regulations.

Caseworkers must:

- Conduct a case conference or FTM regarding transfer to tribal agency/court and utilize the DHS-120B prior to closing case in MiSACWIS.
- Close the case in MiSACWIS after completing the case transfer to the tribe.

If Michigan MDHHS is providing care and supervision of the child, Michigan MDHHS will fund the cases according to state and federal law.

CONTINUITY OF SERVICES

Utilize the DHS-120B to assist in transferring a case to a tribe and maintaining a continuity of services and funding for the Indian child.

INTERSTATE COMPACT (ICPC)

Case transfers to and from other states and/or tribes with Title IV-E programs may be facilitated through ICPC and negotiated prior to case transfer.

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Fostering Connections to Success and Increasing Adoptions Act, P.L. 110-351.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

MCR 3.905 Indian Children; Jurisdiction, Notice, Transfer, Intervention.

OVERVIEW

Adoption may only be considered as a permanency plan for the Indian child when the termination of parental rights provision in ICWA/MIFPA can be met. In cases of conflict between the Adoption and Safe Families Act (ASFA) and the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA), the requirements of ICWA/MIFPA apply.

An adoptive placement is subject to the placement preferences in ICWA/MIFPA.

PRE-ADOPTIVE PLACEMENT

Case Conference/Family Team Meeting (FTM)

The caseworker must hold a case conference or FTM before the agency makes a recommendation to the court for consent to adoption. The appropriate tribal or Indian representatives must be invited to this case conference or FTM.

NOTICE OF INDIAN CHILD ADOPTION

When conducting a permanency planning hearing or petitioning the court for adoption for any Indian child who is a permanent court or an MCI ward under the department's supervision, complete form DHS-120, American Indian/Alaska Native Indian (AI/AN) Child Welfare Case Notification form and MDHHS-5598, American Indian/Alaska Native (AI/AN) Child Tribal Enrollment/Eligibility Verification form; and all required notice attachments (petition, mailing recipient contact list, etc.) and send **by registered mail with return receipt to all** of the following:

- Parent(s).
- Indian custodian(s), if any.
- Tribe(s), when known or upon receipt of verification from the Midwest Bureau of Indian Affairs of the Indian ancestry of that tribe.

- Midwest Bureau of Indian Affairs (as designated for Michigan by the Secretary of the Interior); and also, if specific tribe is undetermined and/or multiple tribes are noticed.
- Bureau of Indian Affairs regional office specific to the tribe/state; if tribe is not located in the Midwest Bureau of Indian Affairs region.
- If a specific tribe is undetermined, notification must also be sent [Addressed to the ICWA Designated Tribal Agent for Service of Notice per Federal Register (81 FR 10887)] to:
 - Tribe(s) located in the county where the offense against the child occurred, in which the offense committed by the juvenile occurred, **and** in which the minor is physically present; **or**
 - The tribe(s) located in the county the incident occurred and in which the minor is physically present.

Notification of hearing to terminate parental rights must be received by all those listed above at least 10 calendar days before the hearing date.

A copy of the DHS-120, MDHHS-5598, other required notice attachments, and return receipt must be filed in the case record and with the court of jurisdiction. Failure to complete proper notice may jeopardize and nullify the court proceedings

ADOPTIVE PLACEMENT

Adoptive placement must not be made pending a determination of the child's Indian status.

REFERRAL TO A CHILD PLACING AGENCY FOR ADOPTIVE PLACEMENT

Upon receipt of court orders terminating parental rights, caseworkers must consult (or document attempts to consult) with the tribe to obtain their recommendation on which child placing agency should provide adoption services for their children; see [FOM 722-07D Permanency Planning-Adoption](#).

If a child's Indian status cannot be verified, but the Indian child's adoptive evaluation indicates placement with an Indian family is in the Indian child's best interest, the adoptive evaluation and ICWA/MIFPA placement preference recommendations for the child should be provided in the referral to the child placing agency.

Child Placement Agency Referral

A referral to a child placement agency should include:

- The initial and updated social history.
- An affidavit of parental request or denial for anonymity (DHS-1919, Parent's Consent/Denial to Release Information to Adult Adoptee) must be attached, when appropriate.
- Information concerning the interest of the Indian child's foster parent(s) in adopting the Indian child.
- Information on siblings.
- The Indian child's racial status other than Indian.
- Other factors that might affect the placement decision.

Child Placing Agency Response

The child placing agency must respond in writing by indicating:

- They have a family available and anticipate placement within sixty days; or
- They do not have a family available, but they expect to recruit an appropriate family for placement. The response must indicate the timeframe for recruiting an appropriate family; or
- The Indian child is not appropriate for placement by the agency, and they are declining the referral.

When a child placing agency has assessed an Indian child as being inappropriate for placement with their agency, the agency must return the referral along with written comments as to why placement was not possible.

**VACATING AN
ADOPTION ORDER
THROUGH FRAUD
OR DURESS**

After the entry of a final order of adoption of an Indian child in any state court of competent jurisdiction, a parent who wishes to withdraw consent on the grounds that consent was obtained through fraud or duress, may petition the court to vacate the decree. Upon a finding that the consent was obtained through fraud or duress, the court must vacate the adoption order and return the Indian child to the parent(s).

Notification of vacated Indian child adoptions should be sent to the parent(s) and tribe(s) (25 CFR 23.139).

No adoption that has been effective for two years or more may be invalidated under the provisions of this subsection unless otherwise permitted under state.

**Restoration of
Custody to Parent**

The caseworker must notify biological parent(s) of their right to petition the court for the restoration of custody of the Indian child and tribe(s), "whenever a final order of adoption has been vacated or set aside, or the adoptive parents voluntarily consent to the termination of their parental rights to the child under the care and supervision of MDHHS" (25 CFR 23.139).

**RELEASE OF INDIAN
ADOPTION
RECORDS**

Adoption records must be released upon application by an adopted Indian person over the age of 18 years, who was the subject of an adoptive placement, and was a ward of the state. The Michigan Department of Health and Human Services (MDHHS) and/or court of jurisdiction must provide information to the applicant regarding the tribal affiliation, if any, of the Indian person's biological parent(s) and such other information as may be necessary to protect any rights flowing from the Indian individual's tribal relationship.

Upon the request of an adopted person over age 18, the adoptive parents or foster care parents, an Indian tribe, or the Secretary of Interior shall disclose such information as may be necessary for the enrollment of the Indian child in the tribe in which the child may be

eligible or for determining any rights or benefits associated with membership (25 USC 1917 & 1951).

LEGAL BASIS

Adoption and Safe Families Act, 42 USC 601 et seq.

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

AFTERCARE
SERVICES, MDHHS
PUBLICATION 858

Michigan Department of Health and Human Services (MDHHS) Publication 858, After Care Services, describes programs available for youth aging out of foster care in Michigan. Indian youth are eligible for the same aftercare services as non-Indian youth. Information regarding services for Indian children aging out of foster care must be provided to an Indian youth by the Indian youth's assigned caseworker at the time the decision is made to assist the Indian youth to move into independent living, out of foster care.

YOUTH IN
TRANSITION (YIT OR
CHAFEE)

Indian youth, like non-Indian youth, are eligible for Youth in Transition (YIT) funds. For eligibility and application information see FOM 950, Youth in Transition; see Tribal Agreement Manual (TAM) for YIT agreements with tribes for additional resources.

YOUNG ADULT
VOLUNTARY
FOSTER CARE
(YAVFC)

Indian youth are eligible for YAVFC services. The Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) apply to YAVFC cases, see FOM 722-16 at <https://dhhs.michigan.gov/OLMWEB/EX/FO/Public/FOM/722-16.pdf#pagemode=bookmarks>.

FOSTER CARE
TRANSITIONAL
MEDICAID (FCTMA)

Indian youth who age out of foster care are eligible for FCTMA once the foster care case is closed. This applies to all Indian youth who have aged out of foster care regardless of when the case closed. To be eligible, Indian youth must meet the following criteria:

- Under 21 years of age; and
- At the time of the youth's 18th birthday he/she is in an out-of-home placement under the responsibility of the MDHHS or tribal court; and

- The youth is not currently incarcerated.

Pursuant to the Patient Protection and Affordable Health Care Act (42 USC 18001 et seq.), Indian children and families may waive their automatic entry into the FCTMA to obtain Indian Health Services (IHS) tribal health care benefits; see FOM 801-805.

INDEPENDENT LIVING SERVICES

Indian youth in care are eligible for independent living services under the same eligibility criteria as other youth; see FOM 722-3C Older Youth Preparation, Placement, and Discharge.

EDUCATION AND TRAINING VOUCHERS (ETV)

Indian youth are eligible for an ETV if they are eligible for the YIT program; see FOM 960, Education and Training Vouchers.

TUITION INCENTIVE PROGRAM (TIP)

All persons are entitled to equality of access to student financial resources and information. For information on TIP go to the website at http://www.michigan.gov/mistudentaid/0,4636,7-128-60969_61016-274565--,00.html.

MICHIGAN YOUTH OPPORTUNITIES INITIATIVE (MYOI)

Current or former foster youth, aged 14 - 23, who were in foster care after they turned age 14, may be eligible for the Michigan Youth Opportunities Initiative. Access to the MYOI is available from the FYIT website.

[The FYIT website http://www.michigan.gov/dhs/0,4562,7-124-5439-161180--,00.html](http://www.michigan.gov/dhs/0,4562,7-124-5439-161180--,00.html) provides information on a variety of issues important to current and former foster youth. The site provides links on how to develop supports, find services, and get answers to important questions.

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Fostering Connections to Success and Increasing Adoptions Act,
42 USC 675 et seq.

Indian Child Welfare Act, 25 USC 1901 et seq.

Patient Protection and Affordable Health Care Act, 42 USC 18001
et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

OVERVIEW

The Indian Child Welfare Act (ICWA) and Michigan Indian Family Preservation Act (MIFPA) apply to American Indian/Alaska Native (AI/AN) youth with a juvenile justice (JJ) status offense case (MCL 712B.5); see [NAA 200, Identification of an Indian Child](#) and [Juvenile Justice Policy Manual](#).

ICWA does not apply if the Indian youth committed an offense that would be a crime if committed by an adult unless that Indian youth is also the subject of a child protective proceeding (MCL 712A.2d). As it pertains to juvenile justice cases, Native American Affairs (NAA) policy, including ICWA and MIFPA, only applies for a youth that has committed a status offense (MCL 712B.3(b)).

DEFINITIONS**Learning program**

An organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

Status Offenses

The Probate Code, MCL 712A.2(a)(2)-(4) or (d) defines status offenses as any of the following:

- The juvenile has deserted their home without sufficient cause, and the court finds on the record that the juvenile has been placed or refused alternative placement, or the juvenile and the juvenile's parent, guardian, or custodian have exhausted or refused family counseling.
- The juvenile is repeatedly disobedient to the reasonable and lawful commands of their parents, guardian, or custodian, and the court finds on the record by clear and convincing evidence that court-accessed services are necessary.
- The juvenile is willingly and repeatedly absent from school or other learning programs, or repeatedly violates rules and regulations of the school or program and the court finds that the juvenile, their parent, guardian or custodian and the school or learning program personnel have met regarding the juvenile's educational problems, and educational counseling and/or alternative agency help has been offered.

- The juvenile is between the ages of 17 and 18 years old, and the court finds on the record that voluntary services have been exhausted or refused, and the youth is one or more of the following:
 - Repeatedly addicted to the use of drugs or the intemperate use of alcoholic liquors.
 - Repeatedly associating with criminal, dissolute, or disorderly persons.
 - Found of their own free will and knowledge in a house of prostitution, assignation, or ill-fame.
 - Repeatedly associating with thieves, prostitutes, pimps, or procurers.
 - Willfully disobedient to the reasonable and lawful commands of their parents, guardians, or other custodians and in danger of becoming morally depraved.

PROCEDURES FOR INDIAN YOUTH WITH A STATUS OFFENSE

Case managers providing case management to an Indian youth who has committed a status offense, must follow all NAA policy and procedures. This includes but is not limited to:

- Inquiry and verification of tribal affiliation.
- Active efforts.
- Engagement with the tribe.
- Case documentation.
- Placement preferences for out-of-home placements.
- Notification to the youth's identified tribe(s) for court proceedings.

For additional information about requirements, see the [CPS Investigation Flow Chart](#).

Verification

At the initial contact with the youth or family, case managers must inquire as to whether the youth is eligible, enrolled or a member/citizen of a tribal nation. When there is *reason to know* that a youth may be an Indian youth, the [MDHHS-5598 American](#)

[Indian/Alaska Native \(AI/AN\) Child/Parent Tribal Enrollment/Eligibility Verification](#) must be sent to the identified tribe(s) or Bureau of Indian Affairs (BIA) to seek verification.

The MDHHS-5598 form should be sent at the earliest point possible in the case but must be sent within **three-business days** of the point when there is reason to know the youth may be an Indian youth. Using the [BIA ICWA Designated Agent Listing](#), the case manager must send the MDHHS-5598 to each identified tribe's ICWA Designated Agent (MCL 712B.9(3)).

Note: Case managers must document all efforts to verify if the youth has tribal affiliation, create the ICWA Record and generate the MDHHS-5598 within the electronic case management system.

For additional information on verification of an Indian youth, refer to [NAA 200, Identification of an Indian Child](#).

Notification to the Tribe(s) of Court Involvement

For any child custody proceeding involving an Indian youth or potential Indian youth, per MCL 712B.9 the following forms and documents must be sent to the youth's tribe(s) at the earliest point possible but within **three-business days** of initiating a child custody proceeding:

- The [DHS-120, American Indian/Alaska Native \(AI/AN\) Court Hearing Notification](#).
- The MDHHS-5598, American Indian/Alaska Native (AI/AN) Child/Parent Tribal Enrollment/Eligibility Verification.
- All other required notice attachments, including (petition, mailing recipient contact information, etc.).

All forms and documents must be sent in accordance with [SRM 131, Confidentiality](#) policy, by registered mail with return receipt for each child custody proceeding (25 CFR 23.111).

For additional information about notification to the tribe, see [NAA 210, Notification of Court Proceeding](#).

Active Efforts

Active efforts must be provided for an Indian youth and their parents to maintain or reunite the Indian youth with their family (25 CFR 23.2). When a youth has a juvenile justice status offense case, active efforts must be provided. The active efforts must consider the prevailing social and cultural conditions and way of life of the Indian child's tribe (MCL 712B.15(2)). For additional information and what constitutes active efforts, see the [NAG, Native American Affairs Glossary](#) and [MCL 712B.3\(a\)](#).

Engagement with the Tribe(s)

Contact with the Indian youth's identified tribe(s) must occur at the earliest point possible. The tribe(s) may offer additional support, services and aid the case manager to connect with extended family members. Engaging with the tribe will support utilization of culturally appropriate services for the youth and their family.

Team Meetings

Tribal representatives must be invited to participate in any case conference, team decision making (TDM) meeting or family team meeting (FTM). It is best practice to include the tribal representative when scheduling the meeting to ensure their participation.

For additional information, see [NAA 205 Indian Child Welfare Case Management](#).

**Placement
Preferences**

If an Indian youth with a juvenile justice case requires an alternative placement, the youth shall be placed within reasonable proximity to their home, considering any of the youth's special needs and must follow the placement preferences as outlined by ICWA and MIFPA (MCL 712B.23(1)). The order of preference includes:

- A member of the Indian child's extended family.
- A foster home licensed, approved or specified by the Indian child's tribe.
- An Indian foster home licensed or approved by the department.

- An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

Note: If the Indian child's tribe establishes a different order of preference, the department or court ordering the placement shall follow the tribe's order of preference (MCL 712B.23(6)).

For additional information about placement of Indian youth, see [NAA 215, Placement/Replacement Priorities for Indian Child\(ren\)](#).

Documentation

All information and efforts pertaining to the Indian youth must be documented in the electronic case management system (MCL 712B.9(7)) including in the ICWA Record, social work contacts and supporting information. Documented information must include but is not limited to:

- Inquiry and verification of the Indian youth's tribal affiliation.
- Actions taken to complete and send the MDHHS-5598.
- Tribal responses.
- Active efforts.
- Placement information.
- Notification of court proceedings.
- Uploading all correspondence, department forms and tribal documentation.

TRIBAL REQUESTS

Tribal Custody

If a tribal agency/court assumes custody of the juvenile, see [NAA 315, Transfer to Tribal Agency/Court](#) policy and utilize the [DHS-120-B, Transfer to Tribal Agency/Court](#) form. The Tribal court must be provided with all records related to the proceedings, including but not limited to, the pleadings and any court record (25 CFR 23.119).

Request for Records

In cases where the tribe is recognized or has formally intervened as a party in a child custody proceeding, the Indian youth's tribe has a right to any report provided to the court and the right to timely examine all reports (MCL 712B.11).

If the tribe requests Children's Protective Services records, see [SRM 131, Confidentiality](#) and the [MDHHS Redaction Unit Tribal Protocol](#).

CONTACT

For more information about this policy contact Child-Welfare-Policy@Michigan.gov.

OVERVIEW

American Indian/Alaska Native (AI/AN) persons are eligible for all adult services and Adult Protective Services (APS) provided by the federal and state governments.

Tribes may have APS codes or laws that provide further protection and services for individuals that are members of the tribe or living on tribal reservation/trust land.

Jurisdiction to investigate, remove and convict, whether state or tribal agencies, is dependent on various factors.

JURISDICTION

For crimes that are committed on an Indian reservation/trust land, the tribal court, law enforcement and social services may have jurisdiction to investigate, remove, and convict. The jurisdiction is dependent on several factors such as the type of crime, where it occurred, whether committed by a tribal member or against a tribal member, etc. Some tribes have agreements with MDHHS to provide APS on Indian reservations/trust lands such as APS agreements or after-hours agreements.

As the responsibility is dependent on the tribe and various factors, refer to the [Tribal Agreements Manual \(TAM\)](#) for specific information. For additional information contact MDHHS-NativeAmericanAffairs@michigan.gov.

**AMERICAN
INDIAN/ALASKA
NATIVE ADULT
PROTECTIVE
SERVICES
INVESTIGATIONS**

When a referral is received for a vulnerable adult, case managers must:

- Determine if a household is on or near an Indian reservation prior to investigating or removing persons for an APS complaint; see [DHS-Pub-172, Michigan Tribal Service Area Map](#) for counties with tribal reservation/trust land or service area.

- Consult with the tribe located in the county where the complaint originated or where the client is domiciled to determine if the person is under the jurisdiction of the tribe.
Note: For additional information regarding consultation with the tribes, see [APR 511, Tribal Consultation and Communication Policy](#). Case managers may contact Native American Affairs (NAA) at MDHHS-NativeAmericanAffairs@michigan.gov regarding questions pertaining to jurisdiction.
- Determine if a tribe has established APS codes or laws that provide further protection, benefits and services for tribal members. Case managers should review tribal websites for tribal codes or contact a tribal social service department/court to obtain copies of applicable tribal codes; see [MDHHS Tribal Government](#) website for tribal websites and/or tribal directory links.
- Provide diligent efforts to identify if a client is of Native American heritage and identify all tribal contacts. Document the information in the Michigan Adult Integrated Management System (MiAIMS) case record/contact logs. All pertinent tribal membership documentation and correspondence should be scanned and uploaded into MiAIMS.
- Utilize the Adult Services and Adult Protective Services policy for case management; see [Adult Services Manual \(ASM\)](#) 200 series policy.

NATIVE AMERICAN OUTREACH SERVICES

Case managers may refer clients to Native American Outreach Services (NAOS) located in the client's county of residence or an adjacent county. For additional information, see the [Native American Outreach Services Manual](#). For NAOS contacts, see the [DHS-Pub-349, MDHHS Native American Outreach Services](#).

OFF-RESERVATION RESOURCES

Urban Indian organizations may have services for AI/AN persons living off-reservation or trust land; see the [Michigan Urban Indian Centers and Programs](#) website for contact lists and services.

Case managers should also review [Native American Affairs Frequently Asked Questions \(FAQs\)](#) for additional resources and services available for AI/AN persons.

Tribal Elder Services Program/Committee/Commission Board

Tribes may have an Elder Services Program and/or committee/board/commission that clients may access to obtain resources specific to their tribe and/or region. See the [MDHHS Tribal Government](#) website for tribal websites and/or tribal directory links.

CONTACT

For more information about this policy contact Child-Welfare-Policy@Michigan.gov.