
ACTIVE EFFORTS

The Indian Child Welfare Act (ICWA), Michigan Indian Family Preservation Act (MIFPA), and [Bureau of Indian Affairs \(BIA\) ICWA Final Rule 25 CFR 23](#) requires state courts and child welfare agencies including placement agency foster care providers (PAFC) to make active efforts tailored to the facts and circumstances in every ICWA/MIFPA case to:

Provide affirmative, active, thorough and timely efforts intended primarily to maintain the Indian child with their family and to prevent removal of an Indian child from his or her parent(s) or Indian custodian(s).

Provide affirmative, active, thorough and timely efforts intended to reunify an Indian child with his or her parent(s) or Indian custodian(s) after removal.

MIFPA (MCL 712B.3[a]) defines active efforts as doing or addressing all of the following:

- Engaging the Indian child, child's parents, tribe, extended family members, and individual Indian caregivers through the utilization of culturally appropriate services and in collaboration with the parent or child's Indian tribes and Indian social services agencies.
- Identifying appropriate services and helping the parents to overcome barriers to compliance with those services, including actively assisting the parents in obtaining such services.
- Conducting or causing to be conducted a diligent search for extended family members for placement.
- Requesting representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards and child rearing practices within the tribal community to evaluate the circumstance of the Indian child's family and to assist in developing a case plan that uses the resources of the Indian tribe and Indian community, including traditional and customary support, actions, and services, to address those circumstances.
- Completing a comprehensive assessment of the situation of the Indian child's family, including a determination of the likelihood of protecting the Indian child's health, safety and

welfare effectively in the Indian child's home; with a focus on safe reunification as the most desirable goal.

- Identifying, notifying and inviting representatives of the Indian child's tribe to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and actively soliciting the tribe's advice throughout the proceeding; and in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.
- Notifying and consulting with extended family members of the Indian child, including extended family members who were identified by the Indian child's tribe or parents, to identify and to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.
- Making arrangements to provide natural and family interaction in the most natural setting that can ensure the Indian child's safety, as appropriate to the goals of the Indian child's permanency plan, including, when requested by the tribe, arrangements for transportation and other assistance to enable family members to participate in that interaction. Includes supporting regular visits with parents and Indian custodian and trial home visits during any period of removal.
- Offering and employing all available family preservation strategies and requesting the involvement of the Indian child's tribe to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child's tribe.
- Taking steps to keep siblings together whenever possible.
- Identifying community resources offering housing, financial, and transportation assistance, mental health, substance abuse, peer support services, in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child's family with special needs, and providing information about those resources to the Indian child's family, and actively assisting the Indian child's family or offering active assistance in accessing those resources.
- Monitoring client progress and client participation in services.

- Providing a consideration of alternative ways of addressing the needs of the Indian child's family, if services do not exist or if existing services are not available to the family.
- Providing post-reunification services and monitoring.

The court determines whether active efforts have been made.

Note: The federal guidelines and MIFPA definition for active efforts apply regardless of whether or not the child's tribe is involved in the custody proceedings.

The worker must attempt to use tribal resources in providing services to the Indian family, including:

- Tribal social services.
- Individual Indian caregivers.
- Medicine men/women.
- Elders.
- Other tribal leaders.

Resources to assist caseworkers with providing active efforts may be found for Michigan tribes at the following websites:

- Bay Mills Indian Community (see www.baymills.org, select Bay Mills Tribal Court > Tribal Code).
- Grand Traverse Band of Ottawa and Chippewa Indians (see www.gtbindians.org for the Web site, the Tribal Code is found in the National Indian Law Library at www.narf.org/nill/Codes/gtcode/index.htm).
- Little River Band of Ottawa Indians (see www.lrboi.com; the tribal code is found in the National Indian Law Library at www.narf.org/nill/Codes/lrcode/lrcodetoc.htm).
- Little Traverse Bay Band of Odawa Indians (see www.ltbodawa-nsn.gov, select Odawa Register > Tribal Code).
- Pokagon Band of Potawatomi Indians (see www.pokagon.com, select Tribal Government > Child Protection Code).
- Saginaw Chippewa Indian Tribe (see www.sagchip.org for the tribal Web site).
- Sault Tribe of Chippewa Indians (see www.saulttribe.com, select Tribal Code).

See Indian Child Welfare Glossary and Flowchart, National Indian Child Welfare Association (NICWA), at 4, available at: http://www.nicwa.org/Indian_Child_Welfare_Act/glossary.pdf.

See BIA Guidelines 80 Federal Register 10146-10159 (2015).

See PSM 714-2, CPS Supportive Services.

See PSM 715-2, Removal and Placement of Children.

ADOPTIVE PLACEMENT

The permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

See the Adoption Services manual (ADM) for more information.

AMERICAN INDIAN

A person who is an enrolled member or citizen (or eligible for enrollment or citizenship) of a United States federally recognized Indian tribe.

ANONYMITY

A request for parent(s) name(s) to remain undisclosed and confidentiality protocol pertaining to a child welfare case. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an Indian child. If the consenting parent provides a written request for anonymity, the court must keep relevant documents pertaining to the inquiry required under 25 CFR 23 confidential. ICWA notice to tribe is still required. The tribe receiving information related to ICWA inquiries must keep documents and information confidential; see 25 CFR 23.107.

BENEFICIARY

A person, organization, etc. that is helped by something.

The beneficiary for Indian child welfare cases, based upon Federal-Indian Trust Relationships, can be simultaneously the Indian child, Indian family, and Indian tribe according to their function or situation.

**BEST INTERESTS
OF THE INDIAN
CHILD**

Meeting the best interests of the Indian child requires recognition of the importance of maintaining connections with family, siblings, extended family, the tribe, and the child's cultural heritage, and requires knowledge and understanding of the damage caused by loss of identity for Indian children (25 USC 1902).

**CHILD CUSTODY
PROCEEDING**

The initiation of court involvement, including any instance when a court orders that a child be physically transferred or moved from the care and residence of a parent or custodian to the care and supervision of some other person or institution in which a parent or Indian custodian may not have the child returned upon demand but parental rights have not been terminated, includes:

- A child protective proceeding.
- A court-ordered foster care placement.
- Termination of parental rights.
- A pre-adoptive placement.
- An adoptive placement.
- Child custody proceedings for children who commit status offenses (offenses that can only be committed by minors).
- A delinquency proceeding that results in the termination of parental rights.
- A guardianship placement (Juvenile and Estates and Protected Individuals Code).
- An Inter-state Compact for the Placement of Children (ICPC) placement.
- A Safe Delivery of Newborns Law placement.
- Child custody proceeding does not mean:

- Placement of a child based upon an act, which, if committed by an adult, would be a crime.
- Placement of a child based upon an award of custody to one of the parent(s) in a divorce proceeding.
- Voluntary placement by a parent with no court involvement.
- Power of Attorney allowing someone else to temporarily care for child (up to 180 days no legal action).

CHILDREN'S SERVICES CASE

Information concerning a child(ren) who is receiving the following services:

- Children's Protective Services.
- Children's Foster Care.
- Adoption.
- Juvenile Justice.
- Guardianship (Juvenile and Estates and Protected Individuals Code).
- Reunification services.
- Post-adoption services.
- Family Preservation.
- Independent or supervised independent living services.

CLEAR AND CONVINCING EVIDENCE

Clear and convincing is the level of evidence necessary for the court to remove an Indian child from his or her parent(s).

Clear and convincing evidence is more rigorous than preponderance of evidence, but a less vigorous standard to meet than proving evidence beyond a reasonable doubt.

**CONTINUED
CUSTODY**

Physical custody and legal custody or both, under any applicable tribal law, tribal custom or state law that a parent or Indian custodian already has or had at any point in the past. The biological mother of a child has had custody of a child.

CUSTODY

Physical custody and legal custody or both, under any applicable tribal law, tribal custom, or state law. A party may demonstrate the existence of custody by looking to tribal law, tribal custom, or state law.

**CULTURALLY
APPROPRIATE
SERVICES**

Culturally appropriate services means services that enhance an Indian child's and family's relationship to, identification, and connection with the Indian child's tribe. Culturally appropriate services should provide the opportunity to practice the teachings, beliefs, customs, and ceremonies of the Indian child's tribe so those may be incorporated into the Indian child's daily life, as well as services that address the issues that have brought the child and family to the attention of the department that are consistent with the tribe's beliefs about child rearing, child development, and family wellness. Culturally appropriate services may involve tribal representatives, extended family members, tribal elders, spiritual and cultural advisors, tribal social services, individual Indian caregivers, medicine men or women, and natural healers. If the Indian child's tribe establishes a different definition of culturally appropriate services, the court shall follow the tribe's definition; see MCL 712B.3.

**DILIGENT
PLACEMENT
SEARCH**

There must be documented contact with the Indian child's tribal social service program, a search of county or state listings of available Indian homes, and contact with local, regional and nationally known Indian programs that have placement resources available for Indian children.

DOMICILE

1. For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which he/she intends to return and remain indefinitely even though the person may be currently residing elsewhere. A domicile is not always the same as a residence. A person can reside in one place but be domiciled in another.
2. For an Indian child, the domicile of the Indian parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent. On occasion, a child's domicile will be in a place where the child has never resided. When there is a question, the Supreme Court accepts the Indian mother's domicile first; then the Indian father's domicile, as the Indian child's domicile.

**EMERGENCY
PROCEEDING**

Includes any court action that involves an emergency removal or emergency placement of an Indian child.

**EVIDENCE BEYOND
A REASONABLE
DOUBT**

The level of evidence necessary to terminate parental rights of the parent of an Indian child. Evidence beyond a reasonable doubt refers to the risk of damage to the Indian child which includes testimony of a qualified expert witness.

**EXTENDED FAMILY
MEMBER**

As defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent.

**FEDERAL
RECOGNITION**

Federal tribal recognition grants to tribes the right to certain benefits, and is largely controlled by the United States federal agency, the Bureau of Indian Affairs (BIA). Federally recognized tribes are those Indian tribes recognized by the United States Bureau of Indian Affairs for certain federal government purposes. Currently, there are 12 federally recognized Indian tribes in the Michigan, and approximately 573 in the United States.

FIRST NATIONS

A term of ethnicity that refers to Aboriginal peoples in Canada who are neither Inuit nor Metis people.

HEARING

A judicial session, including mediation, held for the purpose of deciding issues of fact, of law, or both.

INDIAN

For the purposes of Indian child welfare, an Indian is defined as any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of Title 43, 25 USC 1903(3) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), or is of tribal descent and is so recognized by an Indian tribe, the Bureau of Indian Affairs or the Department of Indian and Northern Development of Canada.

INDIAN CHILD

An unmarried person who is under age eighteen and is:

- A member or citizen of a federally recognized Indian tribe.
- Eligible for membership or citizenship in a federally recognized Indian tribe.

Note: Applies to non-married persons up to age 21 in foster care.

**INDIAN CHILD'S
TRIBE**

The federally recognized Indian tribe in which an Indian child is a member, eligible for membership, or in the case of an Indian child who is a member of, or eligible for membership in more than one

tribe, the Indian tribe with which the Indian child has the more significant contacts or the tribe outlined in 25 CFR 23.109.

INDIAN CHILD WELFARE ACT (ICWA)

An act by the United States Congress providing laws for states regarding child custody and placement of Indian children in child welfare cases.

INDIAN COMMUNITY

A group of people who share common interests, beliefs, values, and views, in which the majority of the people are Indian.

INDIAN CUSTODIAN

An Indian person who has custody of an Indian child under tribal law or custom, or under state law, or to whom temporary physical care, custody, and control has been voluntarily transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to tribal law, tribal custom, or state law.

INDIAN FAMILY

A group of people related to one another through ancestry or marriage, residing in the same household, in which one or more persons in the household self declares as having Indian ancestry.

INDIAN FOSTER HOME

A foster home where one or more of the licensed or approved foster parents is an Indian as defined in 25 USC 1903(3). Includes a child's:

- Home, licensed by the department or a tribe, in which one or both of the primary caregivers are members of an Indian tribe.
- Unlicensed relative home where one or more of the relatives are members of an Indian tribe.

INDIAN TRIBE

An Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to

Indians, including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act, as amended, *or other recognized group or community which is so recognized as an Indian tribe by any state commission, agency, or authority which has the statutory power to extend such recognition* (MCL 712B.3(o)).

INUIT

A general term for a group of culturally similar indigenous peoples inhabiting the Arctic regions of Alaska, Greenland, Canada, and Siberia.

INVOLUNTARY PROCEEDING

A child-custody proceeding in which the parent does not consent of his or her free will to the foster care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster care, preadoptive, or adoptive placement under threat of removal of the child by a state court or agency. Any action where a child is removed from a parent/Indian custodian and such parent/Indian custodian cannot have the child returned upon demand (MCL 712B.3(B)).

LEGAL FATHER

A male, defined by law, with recognized legal rights associated with a child or child(ren). *Michigan Court Rule* defines *father* as:

- A man who is married to the child's mother at any time from the child's conception to the child's birth.
- A man who legally adopts the child.
- A man who has been determined to be the child's legal father in an order of filiation or judgment of paternity.
- A man judicially determined to have parental rights.
- A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act.

See Michigan Absent Parent Protocol: Identifying, Locating, and Notifying Absent Parents in Child Protective Proceedings at:

<http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/APP.pdf>.

METIS

A Métis is a person born to parents who belong to different groups defined by visible physical differences, regarded as racial, or the descendant of such persons. In Canada, the term usually designates a constitutionally recognized individual born of an Aboriginal group descended primarily from the marriages of Scottish and French men to Cree, Saulteaux, and Ojibwa women in southern Rupert's Land starting in the late 17th century, and the marriages of French women to Ojibway men starting in Quebec in the middle 17th century.

NATIVE AMERICAN

A term used to describe indigenous people of the American continents which has several different common meanings and scope, according to regional use and context.

NATIVE AMERICAN AFFAIRS OFFICE

The office within the Michigan Department of Health and Human Services (MDHHS) responsible for:

- The department's child, adult and family services policy compliance with the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) and Indian law.
- Investigating concerns from tribes.
- Providing consultation to department and private agency foster care (PAFC) staff relating to Indian law and administrative rules.
- Providing ICWA/MIFPA materials and training.
- Acting as the department liaison between tribes and urban Indian organizations.
- Tribal consultation with federally recognized Indian tribes.

PARENT

A biological parent(s) of an Indian child or a person who has lawfully adopted an Indian child, including adoptions under tribal law or custom (MCL 712B.3[s]).

PERMANENCY

A child's placement that lasts long enough and is comfortable enough for the child to have a sense of belonging; "belongingness."

See Foster Care Manual (FOM) for further information on permanency and federal legal permanency goals (FOM 722-07).

**PRE-ADOPTIVE
PLACEMENT**

The temporary placement of an Indian child in a foster home or institution after termination of parental rights, but prior to or in lieu of adoptive placement and final adoption.

PUTATIVE FATHER

The alleged biological father of a child. A putative father can only exist where a child has no legal father.

**QUALIFIED EXPERT
WITNESS (QEW)**

The Michigan Indian Family Preservation Act (MCL 712B.17) defines a QEW as:

- 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 and 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.

An Indian Outreach Worker (IOW) may be considered a qualified expert witness if the department receives written approval from the child's tribe approving the IOW as a qualified expert witness.

**REMEDIAL
SERVICES**

Services designed to remedy the circumstances, which caused or may cause placement or continued placement of the Indian child outside the home.

RESERVATION

Indian country as defined in Section 1151 of Title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual, or held by an Indian tribe or individual subject to a restriction by the United States against alienation.

SECRETARY

The United States Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

STATUS OFFENSE

A child's violation of the juvenile code by the commission of an act that would not be illegal if committed by an adult, but that indicates that the child is beyond parental control. They are acts prohibited only because of a person's status as a minor. Examples include running away from home, truancy and incorrigibility.

**TEMPORARY
FOSTER CARE
PLACEMENT**

Any action removing an Indian child from the parent(s) or Indian custodian(s) for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated. This includes legal guardianship because the parents may not be able to have the Indian child returned upon demand (MCL 712B.3(b)(i)).

**TERMINATION OF
PARENTAL RIGHTS**

An action, including a voluntary legal proceeding, which may result in the termination of the parent-child relationship or the permanent removal of the child from the parent's custody.

TRIBAL COURT

A court with jurisdiction over child custody proceedings and which is either a court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TRIBAL INTERVENTION

Tribal intervention in a child *custody* case occurs when a tribe acts on its right to participate in a child custody *proceeding*. *The Indian Child Welfare Act* states “in any State court proceeding for the *foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding* [italics added].”

This intervention can be broadly interpreted: the tribe may request to transfer the case to tribal court (a “transfer of jurisdiction”) or the tribe may choose to only monitor the case through court records. . A tribe may intervene at any point in an Indian child custody proceeding. Transfer of jurisdiction from state court to tribal court can be requested by either the parent or the tribe.

See Indian Child Welfare Glossary and Flowchart, National Indian Child Welfare Association (NICWA) at: http://www.nicwa.org/Indian_Child_Welfare_Act/glossary.pdf.

TRIBAL MEMBERSHIP

Defined by each tribe and is not necessarily based on blood quantum.

TRUSTEE

A trustee is a person or organization acting on behalf of a beneficiary.

The Michigan Department of Health and Human Services (MDHHS), as a government agency in accordance with federal Indian law, acts as a trustee for Indian people in Indian Child Welfare cases. The beneficiary for Indian Child Welfare cases can be simultaneously the Indian child, Indian family, and Indian tribe according to their function or situation. Indian Child Welfare cases

often involve multiple American Indian beneficiaries based upon Federal-Indian Trust Relationships.

UPON DEMAND

A parental/custodial request that ends a voluntary child custody proceeding action; when either parent or Indian custodian can regain custody simply upon verbal request without any formalities or contingencies.

URBAN INDIAN ORGANIZATION

An organization facilitating programming and advocacy for American Indians located in an urban area.

VOLUNTARY PROCEEDING

A child custody proceeding that is not an involuntary proceeding, such as a proceeding for foster care, preadoptive, or adoptive placement that 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, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.