



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

DEPARTMENT OF HEALTH & HUMAN SERVICES  
LANSING

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# Native American Affairs Policy Manuals

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**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.

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**LEGAL BASIS**

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

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

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

Child Abuse Reporting, 42 USC 13031.

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

Indian Child Protection and Family Violence Protection Act, 18 USC 1169; 25 USC 3201 et seq.

Indian Child Welfare Act, 25 USC 1901 et seq.

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

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

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

Social Security Act, 42 USC 670 et seq.

Social Welfare Act, 1939 PA 280, as amended, MCL 400.1 et seq.

Tribal Law and Order Act, 25 USC 2801 et seq.

Violence Against Women Act, 42 USC 14043 et seq.

Estates and Protected Individuals Code, MCL 712B.3(k)(i)(b) & (C).

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

Safe Delivery of Newborns Law, MCL 712.1 et seq.

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**TRIBAL AFFILIATION  
INQUIRY**

Identification of an Indian child at the earliest point of contact. Caseworkers must inquire of the parent(s), caretaker(s), child(ren), or Indian custodian(s) for each child in the household.

**Note:** Caseworkers must document that this question was asked, of whom, and how it was answered.

Circumstances in which the court, department or other party has reason to believe a child is an Indian child includes, but are not limited to:

- Someone informs the court that the child is an Indian child.
- The residence or domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community.
- Any public or state-licensed agency involved in child protection services or family support has discovered information that suggests the child is an Indian child.
- The child who is the subject of a legal proceeding gives the court reason to believe s/he is an Indian child.
- An officer of the court involved in a legal proceeding has knowledge that the child may be an Indian child.

If the child or the child's parent has affiliation with an American Indian/Alaska Native tribe, the caseworker must gather as much of the following information from the child or parent or any other person with knowledge of the child's or parent's tribal affiliation in a culturally competent manner:

- Name of the tribe(s) in which the child or parent is a member or eligible for membership.
- The tribe's address and telephone number.
- A copy of the tribal identification card or letter from the tribe regarding enrollment or identification number(s) of the parent(s) and child(ren).
- Name of the child's:

- Birth mother (including any maiden name).
- Maternal and paternal grandparents.
- Putative, biological, or legal father.
- Birth places of the child and the child's parents.
- Social Security numbers for the child and the child's parents.
- If the birth mother was adopted, the name of the mother's birth mother (if available).
- Certificate of Indian blood of the child and parents.
- Other information about extended family members, including the names, clan affiliation, dates of births, and addresses of grandparents, aunts, uncles, cousins, great grandparents, step-parents, first and second cousins; see 25 CFR 23.107.

## VERIFICATION OF TRIBAL MEMBERSHIP

Caseworkers must utilize the MDHHS-5598, American Indian/Alaska Native (AI/AN) Child Tribal Enrollment/Eligibility Verification form to determine a child's potential tribal affiliation. The MDHSS-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 may have affiliation.

For cases where the department initiates a child custody proceeding/petition in court concerning a child who may have tribal affiliation, the caseworker must also send ICWA notice utilizing the DHS-120 American Indian/Alaska Native (AI/AN) Court Hearing form and all required notice attachments (petition, mailing recipient contact list, etc.); see NAA 210 Notification of Court Proceeding.

Only individual tribes can verify tribal membership or eligibility.

Caseworkers must utilize the [Federal Register ICWA Designated Tribal Agents for Service of Notice List \(81 FR 10887\)](#), pursuant to the Bureau of Indian Affairs (BIA) ICWA Final Rule 25 CFR 23 to identify mailing addresses and contact information for appropriate tribal ICWA staff in the United States.

Caseworker Tools: [The State of Michigan ICWA/MIFPA Field Guide](#), [Michigan Tribal Service Area Map](#), and [MDHHS/SCAO Indian Child Welfare Act Posters \(Pub 5064\)](#) may assist

caseworkers in identifying tribes in their county and case planning with clients. These caseworker tools and additional resources are available on the [MDHHS Native American Affairs website](#) for MDHHS staff and public consumers.

MDHHS Indian outreach workers (IOW) are available in 12 counties and may assist caseworkers with the Indian ancestry verification process upon approval of an Indian Outreach Services (IOS) supervisor; see IOW contact list at

[http://www.michigan.gov/documents/dhs/NAA\\_IOS\\_Contacts\\_390164\\_7.pdf](http://www.michigan.gov/documents/dhs/NAA_IOS_Contacts_390164_7.pdf) and DHS-382, Indian Outreach Services Referral form.

### **Non-respondent - Tribal Enrollment/ Eligibility Verification**

For cases where a tribe has not responded to the MDHHS-5598 and subsequent Tribal Enrollment/Eligibility Verification follow up (phone, email, in-person, and/or faxed inquiries) with the ICWA Designated Tribal Agent at the child's tribe, caseworkers must document in MiSACWIS the active efforts and due diligence in obtaining tribal affiliation verification; and implement ICWA/MIFPA requirements until the court makes a finding (25 CFR 23.108 and 81 FR 96476 BIA Guidelines for Implementing the Indian Child Welfare Act).

### **Documentation**

Caseworkers must upload all department forms for Indian child welfare case management and any tribal documentation/correspondence provided by the tribe or client into the MiSACWIS ICWA details section in the client's case record; see MDHHS Learning Management System (LMS) for MiSACWIS ICWA Job Aids.

### **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.

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**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](http://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**



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**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).

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**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).

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**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.

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**NOTICE**

In any child custody proceeding, that an Indian child is involved, the DHS-120, American Indian/Alaska Native (AI/AN) Child Case Notification form, and MDHHS-5598, American Indian/Alaska Native (AI/AN) Child Tribal Enrollment/Eligibility Verification form; and all other required notice attachments (petition, mailing recipient contact information, etc.) must be sent **by registered mail with return receipt** for every hearing to **all** of the following (25 CFR 23.111):

- Parent(s).
- Indian custodian(s) (if any).
- Tribe(s) [Addressed to the [ICWA Designated Tribal Agent for Service of Notice](#) identified per Federal Register (81 FR 10887) and [BIA ICWA Final Rule 25 CFR 23](#)], 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); for all court hearings or if specific tribe is undetermined and/or multiple tribes are noticed.
- Bureau of Indian Affairs Regional Office specific to the tribe/state; for all court hearings or 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.
- The parent(s) or Indian custodian(s) and the child's tribe or Secretary of the Interior must receive the notice **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 case record and court

of jurisdiction. Failure to complete proper notice may jeopardize and nullify the court proceedings.

### **Non-respondent - Tribal Notice**

If a tribe does not respond to the DHS-120 and required notice attachments (MDHHS-5598, petition, mailing recipient contact list, etc. or subsequent follow up phone, email, in-person, and/or faxed inquiries regarding a court proceeding with the ICWA Designated Tribal Agent at the child's tribe), caseworkers must document active efforts and due-diligence in collaboration attempts and implement ICWA/MIFPA requirements until a court makes a finding; see [NAA 200, Identifying an Indian Child\(ren\), Non-Respondent - Tribal Enrollment/Eligibility Verification](#), and 25 CFR 23.111.

### **ICWA/MIFPA Child Custody Proceedings**

Initiate a child custody proceeding/petition for:

- Children's Protective Services (CPS).
- Foster Care placement.
  - Out of home placement.
- Interstate compact for the placement of children.
- New dependency under probate code (Human Trafficking).
- Safe Delivery of Newborns Law.
- Ongoing Foster Care placement.
- Guardianship or Limited Guardianship placement (Estates and Protected Individuals Code[EPIC]).
- Juvenile Guardianship placement.
- Pre-adoption and Adoption placement.
- Juvenile Justice placement (status offense).

And, if:

- The child is a member or eligible for membership or citizenship in a U.S. federally recognized Indian tribe (Indian Child Welfare Act, 25 USC 1903(4) and Michigan Indian Family Preservation Act MCL 712B. 1 - 41).

## TIMEFRAMES

Within **three** business days of assignment in cases where the department initiates a child custody proceeding/petition in court, caseworkers must make thorough efforts to identify any Indian child(ren); see [NAA 200, Identification of Indian Child\(ren\)](#).

Obtaining the involvement of the tribe or an Indian organization must occur at the earliest point possible.

## TRIBAL INTERVENTION

An Indian child's tribe has the legal right to intervene at any point in all child custody proceedings for an Indian child.

## TRIBAL AFFILIATION

When there is reason to believe a child may be Indian, the caseworker must follow ICWA/MIFPA requirements, pending verification of the child's Indian status.

## DOCUMENTATION Active Efforts and Petitions

Caseworkers must demonstrate active efforts were provided to prevent the breakup of an Indian family in all petitions; see Indian Child Welfare Case Management policy and the Active Efforts and Petition Writing Job Aid on the NAA website at [www.michigan.gov/americanindians](http://www.michigan.gov/americanindians).

For court cases, involvement of the tribe and/or Indian organization must be actively sought and documented utilizing the DHS-120 form and uploaded into MiSACWIS ICWA details (MCL 712B.3).

## Qualified Expert Witness Testimony

A qualified expert witness (QEW) is the petitioner's burden of proof and testifies in a removal, placement, and termination of parental rights proceeding pertaining to the child-rearing practices of the

child's tribe and whether or not continued custody of the child with respective parent(s) or Indian custodian(s) is likely to result in serious harm or damage to the child. Courts may also ask a QEW if active efforts were made as applicable to their expertise and case involvement.

Efforts must be made to assist the QEW with preparation for the court hearing; see the MDHHS QEW Job Aid on the NAA website.

### Case Record

Caseworkers must upload all department forms for Indian child welfare case management (DHS-120 and MDHHS-5598 forms, etc.), the registered mail/return receipt, and any written correspondence received from the tribe to the court into the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) in the client's case record.

Caseworkers must attach and send copies or originals (depending on court preference for original documentation) of all department forms for Indian child welfare case management (DHS-120 and MDHHS-5598 forms, etc.), the registered mail return receipt documentation, and any tribal correspondence received by the department to the court of jurisdiction.

Document the results of all attempts to gather each of the items above in the MiSACWIS reasonable efforts section of the service plan and report narrative; and all applicable ICWA details sections.

**Note:** All supporting documentation and completed forms are critical to ensure proper ICWA/MIFPA documentation.

### 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.



**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.

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**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.

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**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.

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## 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.

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**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.

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**EXCEPTIONS TO  
REQUIREMENTS TO  
FILE TERMINATION  
PETITION**

A determination not to seek a 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 termination of parental rights would not be in the best interest of a child.
- Services that are necessary for the safe return of the Indian child to their home have not been provided.

**Requirements to  
Terminate Parental  
Rights**

Termination of parental rights may not be ordered without a court determination that all of the following are true:

- 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 Indian child as provided in the testimony from a qualified expert witness; and
- Active efforts were provided to the family 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).

***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 damage to the Indian child; see [NAA 205, Indian Child Welfare Case Management](#).

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**Notice of Hearing  
to Terminate  
Parental Rights**

The caseworker must send the DHS-120, American Indian/Alaska Native (AI/AN) Child Case Notification form and MDHHS-5598, American Indian/Alaska Native (AI/AN) Child Tribal Enrollment/Eligibility Verification form; and all other required notice attachments (petition, mailing recipient contact list, etc.) **by registered mail with return receipt to all** 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).
- 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.

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**VOLUNTARY  
CONSENT TO  
TERMINATION OF  
PARENTAL RIGHTS  
Release**

Caseworkers must file court form PCA 305, Release of Parental Rights, in the MiSACWIS file for an Indian child in accordance with the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) for cases involving a voluntary consent to release parental rights; see court form PCA 305, Release of Child by Parent (MCL 712.B.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) (MCL 712B.13[3-4] and [6]).

**Safe Delivery of  
Newborns Law**

Even if a parent surrenders their child under the Safe Delivery of Newborns Law, ICWA/MIFPA still apply; see [NAA 200](#) and [NAA 205](#).

Withdrawal of Voluntary Consent to Release policy also applies to an Indian child surrendered to a Safe Delivery of Newborns Law location. Caseworkers must attach the DHS-4819/DHS-4820 to the MiSACWIS file; see MCL 712.1.

**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.

Safe Delivery of Newborns Law, MCL.712.1 et seq.

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

**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.

**TRIBAL CHILD CARE  
FUND**

The Social Welfare Act and the annual appropriations act for the Michigan Department of Health and Human Services (MDHHS) contain provisions by which the state may reimburse the tribe for 50 percent of their allowable expenditures related to non-Title IV-E funded Indian children out-of-home and in-home care programs. The tribe must have an approved Annual Plan and Budget to be able to request 50 percent reimbursement. The tribe makes the actual foster care payment to the foster care provider or in-home service program; see Tribal Funding Flow Chart.

In-home care programs may include: day treatment programs, counseling, tutoring, and intense probation. Out-of-home care programs include foster care, independent living, and child care institutions.

Reimbursement for allowable expenditures to the tribe is handled in the same manner as reimbursement to the counties under the county child care fund provisions in FOM 901-8, Fund Sources.

**Annual Plan and  
Budget**

The annual plan and budget for tribal child care fund and reimbursement are due by October 1 each year, and must be renewed annually.

**FOSTER CARE  
PAYMENT FOR  
INDIAN CHILDREN**

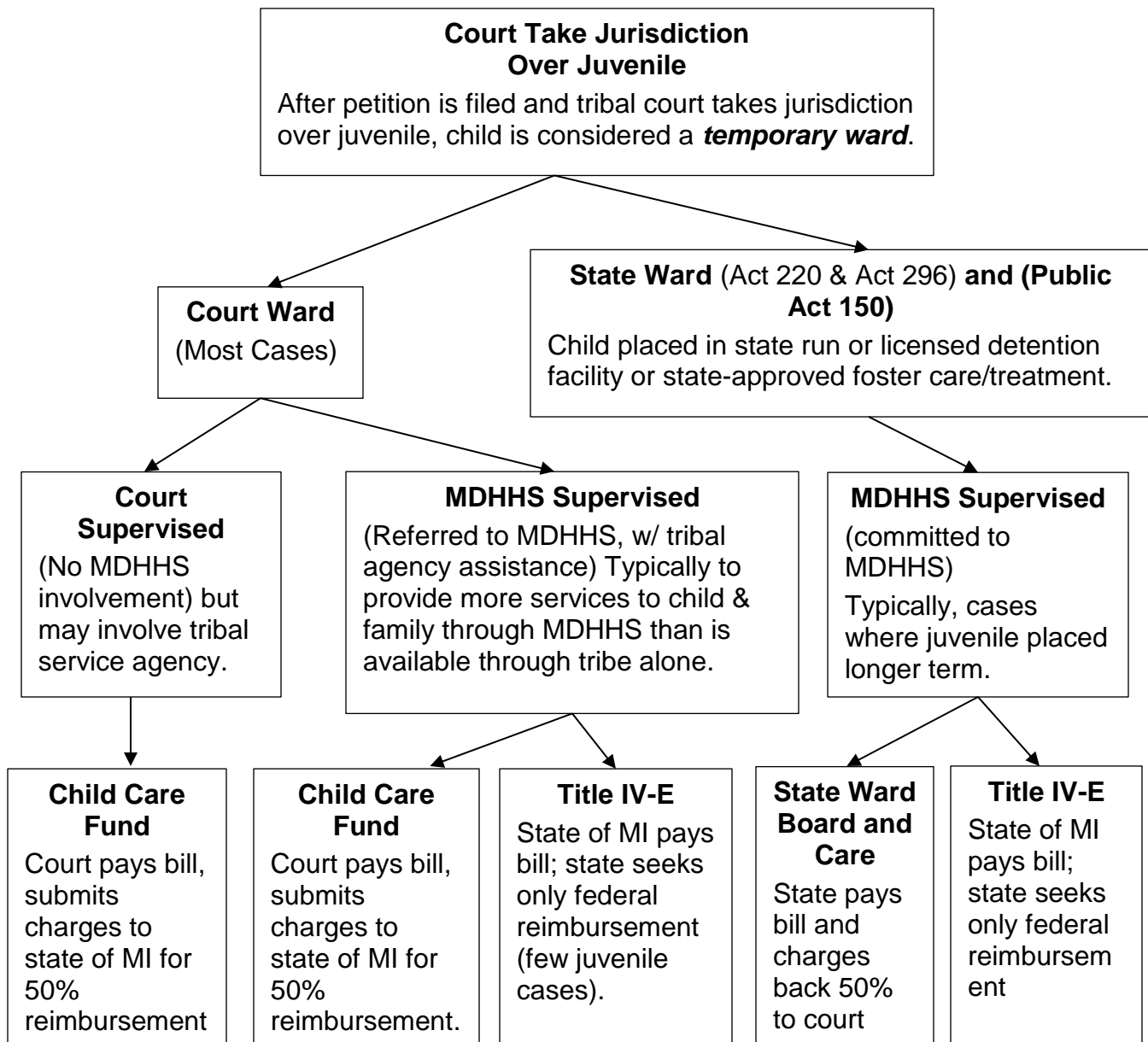
An Indian child under jurisdiction of a state or tribal court is funded in the same manner as any other Michigan child in foster care including adoption, child care development fund, and juvenile guardianship assistance or in accordance with any MDHHS policy and/or agreement (such as, tribal/state Title IV-E agreement).

**Tribal Funding  
Flow Chart**

Federal and state funding laws and/or tribal agreements apply to ICWA/MIFPA and Juvenile Justice Indian child cases.

Caseworkers should consult the Tribal Funding Flow Chart to assist with funding clarifications as necessary for case management and tribal reviews/transfers.





**Note:** Most cases fall under Child Care Fund (CCF) or State Ward Board & Care (SWBC) or Title IV-E. In either case, court typically pays 50% of the cost. The difference is that with CCF, court pays up front and seeks 50% reimbursement from state, with SWBC, state pays up front and charges back 50% to the court and with Title IV-E, the state and federal government share the cost of eligible expenses. For a youth that is IV-E eligible, if a service, such as one-on-one care is required, this is a non-eligible service under IV-E and will be paid by the secondary fund source, CCF or SWBC.

**AMERICAN INDIAN  
CHILD  
ADMINISTRATIVE  
RATE**

There is an American Indian child administrative rate for placement agency foster care (PAFC) of an Indian child welfare case. Caseworkers and/or PAFC staff may contact Native American Affairs or the local MDHHS office for further assistance with American Indian child administrative rate processing.

**LEGAL BASIS**

Indian Child Welfare Act (ICWA), 25 USC 1901 et seq.

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

Social Welfare Act, 1939 PA 280, as amended, MCL 400.1 et seq.

State of Michigan Annual Appropriations Act.

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

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**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).

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**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](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.

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 Michigan Department of Health and Human Services (MDHHS) office in the county in which the Indian child resides.

Case Management

For Indian children, the case plan must be developed in collaboration with the child's tribe. The caseworker must document the request for tribal collaboration in the MiSACWIS ICWA details and upload all court orders in MiSACWIS ICWA details section.

Funding  
Determination

Each local MDHHS office must determine eligibility for funding and services, as well as ongoing case planning and monitoring of a placement or commitment order from a local Family Division of Circuit Court or tribal court child welfare case with MDHHS care and supervision; see NAA 300 and NAA 315.

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.

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**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.

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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.

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## 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.

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**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](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.

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**PROCEDURES FOR  
INDIAN YOUTH**

Juvenile Justice staff who are working with an Indian youth must follow the procedures outlined in this policy if:

- The Indian youth is charged with any of the following status offenses:
  - (1) The juvenile has deserted his or her 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.
  - (2) The juvenile is repeatedly disobedient to the reasonable and lawful commands of his or her parents, guardian, or custodian, and the court finds on the record by clear and convincing evidence that court-accessed services are necessary.
  - (3) The juvenile willfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile's educational needs, or repeatedly violates rules and regulations of the school or other learning program, and the court finds on the record that the juvenile, the juvenile's parent, guardian, or custodian, and school officials or learning program personnel have met on the juvenile's educational problems and educational counseling and alternative agency help have been sought. As used in this sub-subdivision only, "learning program" means 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.

If the court finds on the record that voluntary services have been exhausted or refused, concurrent jurisdiction in proceedings concerning a juvenile between the ages of 17 and 18 found within the county who is 1 or more of the following:

- (1) Repeatedly addicted to the use of drugs or the intemperate use of alcoholic liquors.

- (2) Repeatedly associating with criminal, dissolute, or disorderly persons.
- (3) Found of his or her own free will and knowledge in a house of prostitution, assignation, or ill-fame.

**Exception:** Certain prostitution related offenses may be set aside; see MCL 712A.18e.

- (4) Repeatedly associating with thieves, prostitutes, pimps, or procurers.
- (5) Willfully disobedient to the reasonable and lawful commands of his or her parents, guardian, or other custodian and in danger of becoming morally depraved.

**AND/OR**

- The Indian youth is the subject of a protective proceeding.

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 protective proceeding.

TRIBAL REQUESTS  
Tribal Custody

If the assumes custody of the child, see NAA 315 Transfer to Tribal Agency/Court policy and utilize the DHS-120B Transfer to Tribal Agency/Court form.

Timeframes for  
Request for Records

Caseworkers must provide the 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 and SRM 131 (MCL 712B.11).

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.

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

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

Probate Code of 1939 (Act 288), MCL 712A.2(a) (2) -(4) or (d).

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**LIST OF TRIBES****Bay Mills Indian  
Community**

12140 W. Lakeshore Drive  
Brimley, MI 49715  
Web site: [www.baymills.org](http://www.baymills.org)

Phone: (906) 248-3241  
Fax: (906) 248-5492

**Grand Traverse  
Band of Ottawa  
and Chippewa  
Indians**

2605 N.W. Bayshore Drive  
Peshawbestown, MI 49682  
Web site: [www.gtbindians.org](http://www.gtbindians.org)

Toll free: (866) 534-7750

**Hannahville Indian  
Community**

N14911 Hannahville B-1 Road  
Wilson, MI 49896  
Web site: [www.hannahville.net](http://www.hannahville.net)

Phone: (906) 466-0306  
Fax: (906) 466-0307

**Keweenaw Bay  
Indian Community**

16429 Beartown Road  
Baraga, MI 49908  
Web site: [www.ojibwa.com](http://www.ojibwa.com)

Phone: (906) 353-6623  
Fax: (906) 353-7540

**Lac Vieux Desert  
Band of Lake  
Superior Chippewa  
Indians**

PO Box 249  
Watersmeet, MI 49969  
Web site: [www.lvdtribal.com](http://www.lvdtribal.com)

Phone: (906) 358-4577\*  
Fax: (906) 358-4785

\* Ask for the Social Services department.

**Little River Band of  
Ottawa Indians**

375 River Street  
Manistee, MI 39660-0314

Phone: (231) 723-8288  
Fax: (231) 723-8020  
Toll free: (888) 723-8288

Web site: [www.lrboi.com](http://www.lrboi.com)

**Little Traverse Bay  
Bands of Odawa  
Indians**

7500 Odawa Circle  
Harbor Springs, MI 49740

Phone: (231) 242-1400  
Fax: (231) 242-1414  
Toll free: (866) 652-5822

Web site: [www.ltbodawa-nsn.gov](http://www.ltbodawa-nsn.gov)

**Match-E-Be-Nash-  
She-Wish Band of  
Pottawatomi Gun  
Lake Tribe**

1743 142nd Ave.  
PO Box 218  
Dorr, MI 49323

Phone: (616) 681-8830  
Fax: (616) 681-8836  
Toll free: (866) 564-7429

Web site: [www.mbpi.org](http://www.mbpi.org)

**Nottawaseppi  
Huron Band of  
Potawatomi**

2221 1/2 Mile Rd.  
Fulton, MI 49502

Phone: (269) 729-5151  
Fax: (269) 729-5920  
Toll free: (866) 499-5151

Web site: [www.nhbpi.com](http://www.nhbpi.com)

**Pokagon Band of  
Potawatomi  
Indians**

58620 Sink Rd.  
PO Box 180  
Dowagiac, MI 49047

Phone: (269) 782-8998  
Fax: (269) 782-9625  
Toll free: (800) 517-0777

Web site: [www.pokagon.com](http://www.pokagon.com)

**Saginaw Chippewa  
Indian Tribe**

7070 E. Broadway  
Mt. Pleasant, MI 48858

Web site: [www.sagchip.org](http://www.sagchip.org)

Phone: (989) 775-4000  
Fax: (989) 772-3508  
Toll free: (800) 225-8172\*

\* Michigan only.

**Sault Tribe of  
Chippewa Indians**

523 Ashmun Street  
Sault Ste. Marie, MI 49783

Web site: [www.saulttribe.com](http://www.saulttribe.com)

Phone: (906) 635-6050  
Fax: (906) 635-4969  
Toll free: (800)793-0660



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## OVERVIEW

American Indian/Alaska Native persons are eligible for all Adult Services and Adult Protective Services provided by the federal and state governments.

Tribes may have Adult Protective Service (APS) codes/laws that provide further protections and services for individuals that are members of the tribe or living on tribal reservation/trust land.

Individuals living on tribal reservation/trust land are under the jurisdiction of the tribal court, law enforcement and social services for certain crimes and misdemeanors (Tribal Law and Order Act [TLOA], 25 USC 2801 et seq).

## JURISDICTION

Tribal court, law enforcement and social services have jurisdiction for investigation, removal and conviction of persons on an Indian reservation/trust land for certain crimes and misdemeanors.

State court, law enforcement, and the MDHHS have jurisdiction for investigation and removal of persons off reservation.

**NOTE:** Tribes may have agreements with MDHHS to provide services on Indian reservations/trust lands such as after-hour agreements; see TAM - Tribal Agreement Manual in the NAA Manual.

## AMERICAN INDIAN/ALASKA NATIVE ADULT PROTECTIVE SERVICES INVESTIGATIONS

Caseworkers should determine if a household is on or near an Indian reservation prior to investigating or removing persons for an Adult Protective Services complaint; see [Tribal Service Area Map](#) for counties with tribal reservation/trust land or service area.

Consultation with the tribe located in the county the complaint originated or the client is domiciled should occur to determine if the person is under the jurisdiction of the tribe.

Caseworkers should determine if a tribe has established Adult Protective Service codes/laws that provide further

protections/benefits/services for tribal members. Caseworkers should review tribal websites for tribal codes or contact a tribal social service department/court to obtain copies of applicable tribal codes; see Native American Affairs website <http://www.michigan.gov/americanindians> for tribal websites and/or tribal directory links.

Caseworkers must provide diligent efforts to identify an Indian person and all tribal contacts in the Adult Services Comprehensive Assessment Program (ASCAP) case record/contact logs. All pertinent tribal membership documentation and correspondence should be scanned and uploaded into ASCAP.

Caseworkers must utilize the Adult Services and Adult Protective Services policy for case management; see ASM 100 - 379H.

## INDIAN OUTREACH SERVICES (IOS)

Caseworkers including those from placement agency foster care (PAFC) may contact or refer a client to an Indian outreach worker (IOW) located in their county or neighboring county to request Indian Outreach Services. Caseworkers should utilize a DHS-382, Indian Outreach Services Referral, to request Indian Outreach Services for clients; see IOS policy in the NAA Manual for IOS service description and NAA website for [IOS map and contact list](#).

## ADDITIONAL SERVICES FOR AMERICAN INDIAN/ALASKA NATIVE PERSONS

Urban Indian organizations may have services for tribal persons living off reservation or trust land; see Native American Affairs website for Urban Indian organization contact lists and services.

Caseworkers should also review the [Frequently Asked Questions \(FAQs\)](#) for other service linkages available for American Indian/Alaska Native persons; see FAQs on the NAA website at <http://www.michigan.gov/americanindians>.

**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.

**LEGAL BASIS**

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

Tribal Law and Order Act, 25 USC 2801 et seq.

Violence Against Women Act, 42 USC 14043 et seq.