

**APPENDIX IV**

**MICHIGAN INDIAN FAMILY PRESERVATION ACT**

MICHIGAN INDIAN FAMILY PRESERVATION ACT OF 1992

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DSS LEGISLATIVE WORK GROUP  
FINAL DRAFT

MICHIGAN INDIAN FAMILY PRESERVATION ACT OF 1992

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Sections \_\_\_\_\_ of the Michigan  
Compiled Laws are added to read as follows:

Sec. 1. Declaration of intent

(1) The Michigan legislature hereby declares that it is the policy of this state to preserve Indian families; to prevent out of home placements of Indian children; to protect the rights and best interests of Indian children and their families; and to promote the stability of Indian families. It is the policy of the state to provide services to Indian families which are holistic, integrated, family centered, community based, culturally competent, and value driven. Indian family preservation services shall strengthen, support and enhance family functioning.

(2) It is the clear intent of the State of Michigan to comply with provisions of the federal Indian Child Welfare Act, Pub. L. 95-608, 25 U.S.C. s. 1901 et seq. These provisions include:

(a) minimum standards for removal of Indian children from their families and placement of Indian children in foster or adoptive homes which reflect the unique values of Indian culture;

(b) the assurance that active and reasonable efforts are made to prevent the breakup of the Indian family;

(c) full faith and credit to the public acts, records and judicial proceedings of any Indian tribe; and

(d) assistance to tribes and Indian organizations for programming directed at strengthening and preserving the Indian family.

(3) The Michigan legislature declares that Indian tribes have rights independent of the rights of individual Indian children and their families.

(4) The Michigan legislature extends the coverage of certain provisions of the federal Indian Child Welfare Act, as more particularly specified in this Act, to the children of Michigan recognized tribes and Canadian bands.

Sec. 2. Definitions.

For the purposes of this Act, the following terms have the meanings specified:

(a) "Agency" when used without modifier means the Department or a licensed child placement agency, unless a different meaning is clear from the context.

(b) "Child" means an unmarried person under the age of eighteen.

(c) "Child custody proceeding" includes any proceeding in state court as defined in this subsection involving a Tribal child:

(i) "Involuntary foster care placement" means any action removing a Tribal child from its parent or Indian custodian for temporary placement in a foster home, institution or the home of a guardian, and in which the parent or Indian custodian cannot have the child returned upon demand but parental rights have not been terminated;

(ii) "Termination of parental rights" means any action resulting in the termination of the parent-child relationship;

(iii) "Preadoptive placement" means the temporary placement of a Tribal child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement;

(iv) "Adoptive placement" means the permanent placement of a Tribal child for adoption, including any action resulting in a final decree of adoption;

(v) "Status offender proceeding" means a proceeding concerning conduct of a child which is termed:

a. incorrigible and/or uncontrollable by parent or Indian custodian;

b. runaway;

c. truant; or

d. possession and/or consumption of intoxicating liquor.

(vi) "Voluntary foster care placement" means a decision in which there has been participation by a licensed child placement agency resulting in the placement of a Tribal child away from the home of the child's parent or Indian custodian into a foster home, institution or home of a guardian, when the parent or Indian custodian may have the child returned upon demand.

(vii) A proceeding under the Michigan Child Custody Act, 1970 PA 91, as amended. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon the award, in a divorce proceeding, of custody to one of the parents.

(d) "Child of a Canadian band" means a child who is registered as an Indian on a band list or a general list maintained by the Canadian Department of Indian Affairs and Northern Development pursuant to ss. 5 through 17 of the Indian Act, R.S.C. 1970, c. 1 - 6, and is a member of or eligible for membership in a band as defined in s. 2(1) of the Indian Act.

(e) "Child of a federally recognized tribe" means a child who is a member of a federally recognized tribe or who has been determined to be eligible for membership by a federally recognized tribe.

(f) "Child of a Michigan recognized tribe" means a child who is a member of a Michigan recognized tribe or who has been determined to be eligible for membership in a Michigan recognized tribe.

(g) "Child's Tribe" means the federally recognized tribe, Michigan recognized tribe, or Canadian band in which the Tribal child is a member or eligible for membership. In the case of a tribal child who is a member of or eligible for membership in more than one tribe, the child's tribe is the federally recognized tribe with which the child has the most significant contacts or, if no federally recognized tribe is involved, the Tribe, with which the child has the most significant contacts. If that tribe does not express an interest in the outcome of the actions described in this Act with respect to the child, any other tribe in which the child is eligible for membership that expresses an interest in the outcome may act as the child's tribe.

(h) "Commission" means the Michigan Commission on Indian Affairs.

(i) "Demand" means an oral or signed, written statement by a parent or Indian custodian of a Tribal child requesting the return of the child who has been voluntarily placed in foster care.

(j) "Department" means the Michigan Department of Social Services.

(k) "Extended family member" means a person as defined by the law or custom of a Tribal child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Tribal child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent.

(l) "Family-based services" means intensive family centered services provided primarily in their own homes and for a limited time.

(m) "Family reunification services" means services designed to help reunite children with their parents.

(n) "Federally recognized tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians

by the Secretary of the Interior because of their status as Indians, including any band under the Alaska Native Claims Settlement Act, Title 43 United States Code, Section 1602, and exercising tribal governmental powers.

(o) "Indian" means any person who is a member of or eligible for membership in a federally recognized tribe, a Michigan recognized tribe, or a Canadian band, or who is an Alaska native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act, Title 43 United States Code, section 1606, or is not a member of any such tribe but is not less than 1/4 quantum Indian blood.

(p) "Indian custodian" means any Indian person who has legal custody of a Tribal child under tribal law or custom, or under Michigan law, or to whom temporary physical care, custody and control has been transferred by the parent of such child.

(q) "Indian organization" means an organization providing child welfare services that is legally incorporated as a nonprofit organization and is governed by a board of directors having at least a majority of Indian directors.

(r) "Licensed child placement agency" means an agency licensed by the Department and which is organized for any of the following purposes:

(i) to receive children for their placement in private family homes for foster care or adoption; or

(ii) to investigate and certify foster family homes and family group homes; or

(iii) to supervise children aged 16 and 17 who are living in unlicensed residences, as provided in section 5(4) of Michigan Public Act 116 of 1973.

(s) "Michigan federally recognized tribe" means a federally recognized tribe located within the State of Michigan.

(t) "Michigan recognized tribe" means any Indian tribe, band, nation or other organized group or community of Indians located within the State of Michigan which complies with all of the following requirements:



(i) is not a federally recognized Indian tribe;  
and

(ii) whose members trace ancestry to an Indian tribe or band which was a party to a treaty with the federal government and which tribe or band ceded land now located within the State of Michigan; and

(iii) which has been designated by the Commission in accordance with Section 37 of this Act.

(u) "Placement prevention services" means services designed to help children remain with their families.

(v) "Qualified expert witness" means:

(i) a member of the child's tribe or community who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices; or

(ii) a person having substantial experience in the delivery of child and family services to Indians, recognized by the child's tribe or community as knowledgeable in the tribal customs as they pertain to child welfare; or

(iii) a professional person recognized by the child's tribe or community as having substantial education and experience in the area of prevailing Indian social and cultural standards and childrearing practices.

(w) "Reservation" means Indian country as defined in Title 18 United States Code, section 1151.

(x) "Tribal child" means a child of a federally recognized tribe, a Michigan recognized tribe, or a Canadian band.

(y) "Tribal court" means an adjudicatory body utilized by a federally recognized tribe which has jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, or a court established and operated under the code or custom of a federally recognized tribe, or is an administrative body of a federally recognized tribe which is vested with authority over child custody proceedings.

(z) "Tribal social service agency" means the unit under authority of the governing body of a tribe which is responsible for human services.

(aa) "Tribe" when used without modifier means a federally recognized tribe, a Michigan recognized tribe, or a Canadian band, unless a different meaning is clear from the context.

### Sec. 3. Placement report.

(1) The director of the Department and the State Court Administrator shall each prepare annually a report of all Tribal children in foster care and residential facilities under the direct supervision of the Department and of the state courts, respectively. Each report shall include, by county and statewide, information on legal status; living arrangement; age; sex; child's tribe; accumulated length of time in foster care; and other demographic information deemed appropriate concerning each Tribal child.

(2) The reports shall be presented to the Commission within 90 days of the end of each fiscal year. The Commission shall make the reports available to the Michigan tribes and to other relevant and requesting parties.

### Section 4. Compliance program.

(1) The Indian child welfare compliance program shall be created within the Department, to consist of the Indian Child Welfare Compliance Committee and Department staff necessary to perform the functions of the program as described in this section. The Department shall administer the Indian child welfare compliance program.

(2) Within the Department there shall be created an Indian Child Welfare Compliance Committee to consist of 11 members as follows:

(a) two members appointed by the Director of the Department, at least one of whom shall be Indian;

(b) the director or director's designee of the state attorney general's office and the state court administrator's office;

(c) a representative selected by the Michigan Probate Judge's Association;

(d) a representative of the Michigan federally recognized tribes appointed by the Inter-tribal Council of Michigan, Inc.;

(e) a representative of each of the following appointed by the Department: non-Indian licensed child placement agencies, and Indian or tribal licensed child placement agencies; and

(f) a representative of each of the following appointed by the Commission: urban Indian organizations; Michigan recognized tribes; and the general public at large.

(3) Committee members appointed under sub. (2)(c), (d), (e) and (f) shall be appointed for three-year terms. The Committee shall annually elect such officers from its members as it deems advisable, to serve at the pleasure of the Committee. The Committee shall meet at least twice in each calendar year. A majority of members of the Committee constitutes a quorum. A majority of members of the Committee is required for any final action by the Committee.

(4) The Committee shall be responsible for overseeing and monitoring compliance with this Act. It shall investigate compliance with this Act and any problems common to the administration of this Act. It may from time to time prepare and issue reports and make findings and recommendations to the Department, other agencies, or the legislature regarding compliance with this Act and recommend any statutory, regulatory or other changes desirable to insure compliance. The Committee shall have no direct enforcement or disciplinary powers.

(5) Notwithstanding any other provision of law, and solely for the purpose of investigating compliance with this Act, the Committee and Department staff assigned to the compliance program shall have a right of access to Department and licensed child placement agency records regarding Indian children and to state court records of child custody proceedings. Records

regarding specific children and their parents or Indian custodians shall be confidential and shall not be disclosed beyond the Committee and Department staff assigned to the compliance program except as otherwise provided by law. Disclosure of confidential information shall be properly safeguarded by the Committee, the staff, and the Department.

Sec. 5. Remedies for noncompliance. (1) Any Tribal child who is the subject of any action governed by this Act, any parent or Indian custodian from whose custody such child was removed, and the Tribal child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action substantially violated any provision of this Act.

(2) Any person, agency or organization which willfully or fails to comply with any provision of this Act shall be civilly liable for the damages proximately caused by the failure; provided, that nothing contained herein shall be construed as a modification, waiver or abrogation of any qualified or absolute governmental or official immunity of such person, agency or organization.

(3) The Department may promulgate rules providing for the repayment or withholding of any Department funds, or the revocation or suspension of any Department license, for the failure of any licensed child placement agency, state court, or other person or entity to comply with the provisions of this Act.

Sec. 6. Severability. In the event that any provision of this Act shall be found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be in full force and effect, notwithstanding such finding.

#### TITLE I: INDIAN FAMILY PRESERVATION

Sec. 7. Indian family preservation grants. The Department is authorized to establish direct Indian family preservation grants to tribes and Indian organizations for placement prevention, family based services, and family reunification services for

Indian children. The Department shall request proposals for Indian family preservation grants and specify the information and criteria required.

Sec. 8. Grant applications. A tribe or Indian organization may apply for an Indian family preservation grant. Application may be made alone or in combination with other tribes or Indian organizations.

Sec. 9. Eligible services. Eligible services provided under Indian family preservation grants include:

- (a) placement prevention services;
- (b) family reunification services;
- (c) family-based services;
- (d) individual and family counseling;
- (e) access to professional individual, group, and family counseling;
- (f) crisis intervention and crisis counseling;
- (g) court advocacy for family preservation and reunification;
- (h) advocacy in working with the Department and private social service agencies, and activities to help provide access to agency services, including but not limited to caretaker and homemaker services, day care, emergency shelter care, access to emergency financial assistance, and arrangements to provide temporary respite care;
- (i) transportation services to the child and parents to prevent placement or reunite the family;
- (j) family and community involvement strategies which build upon the cultural strengths of the Indian community to prevent child abuse; domestic violence and chronic neglect of children;
- (k) coordinated child welfare and mental health services to Indian families;
- (l) expanding or improving services by packaging and disseminating information on successful approaches or by

implementing models in Indian communities relating to the development or enhancement of social structures that increase family self-reliance, positive self-image of family members, and links with existing community resources;

(m) family retrieval services to help adopted individuals reestablish legal affiliation with the tribe; and

(n) other activities and services approved by the Department that further the goals of family preservation and reunification. The Department may specify the priority of an activity and service based on its success in furthering these goals.

Sec. 10. Continued legal responsibility of Department. Nothing in this title reduces or eliminates the Department's obligation under law to provide services to Indian children, nor shall existing services be reduced because of the availability of these funds.

Sec. 11. Payments; required reports and documentation. (1) The Department shall make grant payments to each approved program monthly based upon receipt of documentation of approved expenditures on forms provided by the Department. Upon written request at the start of the state's fiscal year the Department shall advance one-quarter of the approved grant amount for the purpose of start-up and program operation. The advanced payment shall be offset during the last quarter of the state fiscal year. Any unexpended funds not offset by approved cost shall be repaid to the Department.

(2) A grant approved under this Title shall be used solely for the purpose stated in the approved grant application.

(3) The Department shall specify requirements for all reporting including financial and program information. Failure to submit reports in a timely fashion or within identified reporting periods may result in the withholding of grant payments.

(4) Quarterly program reports shall be submitted for each approved Indian family preservation grant to the Department providing a detailed description of activities conducted during the preceding quarter including line item cost information, number of clients served and the types of services provided. The quarterly reports must be submitted no later than 30 days after the end of each quarter.

(5) A final evaluation report must be completed and submitted to the Department at the end of the state's fiscal year. This report must include client outcomes, cost and effectiveness in meeting the goals of this Act.

(6) Individual case record documentation, cost and expenditure information and other supporting grant documentation as specified by the Department shall be maintained by the tribe or Indian organization responsible for the approved grant program and shall be made available to the Department for on-site review.

**Sec. 12. Monitoring and evaluation.** The Department shall design and implement methods for monitoring the delivery and evaluating the effectiveness of Indian family preservation services funded through these grants.

**Sec. 13. Existing grants.** Tribal courts of Michigan federally recognized tribes shall be eligible to receive funding as provided by Act No. 374, Public Acts of 1984, which provides for an annual grant for the employment of a juvenile officer appointed by the tribal court judge, and Act No. 222 of the Public Acts of 1983, which provides for a \$15,000 basic grant to supplement added juvenile justice service costs.

**TITLE II: CHILD CUSTODY PROCEEDINGS INVOLVING TRIBAL CHILDREN**

**A. Provisions Dealing With All Tribal Children.**

**Sec. 14. Rights of Parent** Whenever any right of a parent is provided for in this title, such right shall accrue to each biological parent whose parental rights have not been terminated. A legal guardian, or an adoptive parent, including a person who

has adopted a child by tribal law or custom. The term "parent" does not include an unmarried father whose paternity has not been acknowledged or established.

Sec. 15. Determination of status of Indian child. (1) The Department or licensed child placement agency shall be responsible for the determination of whether a child brought to its attention for the purposes described in this Act is a Tribal child and the identity of the child's tribe or tribes. The determination shall be made as soon as practicable after the Department or licensed child placement agency knows or has reason to know that a Tribal child may be involved. The Department or licensed child placement agency shall make reasonable inquiry calculated to determine whether a child brought to its attention for purposes of this Act is a tribal child.

(2) In any child custody proceeding, the court shall establish whether a Tribal child is involved and, if so, the child's tribe.

Sec. 16. Identification of extended family. Any agency considering placement of a Tribal child shall make reasonable efforts to identify and locate Indian and non-Indian extended family members for purposes of determining placement options.

Sec. 17. Notice of administrative review. In any administrative review of a placement of a Tribal child, the child's tribe, the Indian custodian, and the parents of the Tribal child shall have notice and a right to participation in the review.

Sec. 18. Placement of Tribal children. (1) In any adoptive placement of a Tribal child by a state court, in the absence of good cause to the contrary, placement shall be made in the following order of preference:

- (a) a member of the child's extended family;
- (b) other members of the child's tribe; or
- (c) other Indian families.

(2) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his or her special



needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. In any foster care or preadoptive placement, in the absence of good cause to the contrary, placement shall be made in the following order of preference:

- (a) a member of the Tribal child's extended family;
- (b) a foster home licensed, approved, or specified by the child's tribe;
- (c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (d) an institution for children approved by a tribe or operated by an Indian organization which has a program suitable to meet the Tribal child's needs.

(3) In the case of a placement under sub. (1) or (2), if the child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in sub. (2). Where appropriate, the preference of the Tribal child or parent shall be considered; provided, that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(4) (a) A determination of good cause not to follow the order of preference set out in subs. (1) through (3) of this section shall be based upon the unavailability of suitable families for placement, taking into account any extraordinary physical or emotional needs of the child, after a diligent search has been completed for families meeting the preference criteria. The burden of establishing the existence of good cause shall be on the party urging the preferences not be followed.

(b) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family member resides or with which the parent or extended family members maintain social and cultural ties.

(5) A record of each such placement of a Tribal child shall be maintained by the Department or licensed child placement agency evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the child's tribe.

Sec. 19. Payment for out of home placements. The Department shall pay the costs of care for any child of a Michigan federally recognized tribe who is placed out of home by a tribal court or probate court of this state, or for any Tribal child who is domiciled in this state who is placed out of home by a probate court of this state, under either of the following circumstances:

(1) The child is committed to or placed under the Department's care and custody by an order of the court which has jurisdiction over the child; or

(2) The child is committed to or placed under the care and custody of a tribe provided that the tribe, which has jurisdiction over the child, has entered into an agreement regarding care and custody of Indian children as authorized by the Indian Child Welfare Act. 25 U.S.C. 1919(a).

The covered costs of care shall include direct cost of care, non-scheduled costs, and administrative costs as established through negotiations between the Department and the tribal social services agency, and costs incurred for, in-home services provided in lieu of out-of-home placement. Costs for in-home programs shall be limited to programs reasonably similar to those the Department has in place statewide as alternatives to out-of-home placement.

Payment shall be made from the Department's foster care account. Payment for placements by a tribal court shall be subject to the conditions set forth in Section 28.

Sec. 20. Voluntarily placed child. (1) Where any parent or Indian custodian of a tribal child voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted in a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Tribal child shall not be valid.

(2) Whenever a parent of a Tribal child consents to the termination of parental rights by releasing the child to an agency, or consenting to the adoptive placement of the child, or any other voluntary proceeding for the termination of parental rights, the parent may revoke consent for any reason at any time prior to the final order of adoption.

(3) Upon demand by the parent or Indian custodian of a Tribal child, the agency responsible for the placement shall return the child in voluntary foster care placement to the parent or Indian custodian within 24 hours of the receipt of the demand.

(4) After the entry of a final decree of adoption of a tribal child in a state court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted by state law.

**Sec. 21. Involuntary placements; notice to tribe.** (1) When the Department or any licensed child placement agency determines that a tribal child or a child who is believed to be a tribal child is in a situation of abuse or neglect that could lead to an out-of-home placement, the agency making the determination shall send notice of the child's condition and of the initial or potential steps taken to remedy it to the child's tribe at the time of the substantiation. If tribal affiliation has not yet been determined, notice shall be sent immediately upon tribal determination.

(2) Whenever the out-of-home placement of a tribal child is changed, the agency making the placement shall send notice to the child's tribe immediately.

(3) Any agency having tribal children in foster care concerning whom a case plan for termination of parental rights has been prepared shall send notice to the child's tribe of the action proposed.

(4) Upon obtaining an order authorizing the filing of a petition for termination of parental rights to a tribal child, the petitioning agency shall provide notice by sending a copy of the order and petition to the child's parents, the child's tribe, and the Indian custodian.

**Sec. 22. Voluntary placement; notice to tribe.** (1) When a tribal child or a child who is believed to be a tribal child is voluntarily placed in foster care, the agency involved in the decision to place the child shall give immediate notice of the placement to the child's parents, the Indian child's tribe, and the Indian custodian. If tribal affiliation has not yet been determined, notice shall be sent immediately upon determination.

(2) Any agency having tribal children in foster care concerning whom a case plan for termination of parental rights has been prepared shall send notice to the child's tribe of the action proposed.

**Sec. 23. Adoptive child placement proceedings.** (1) In the event of an involuntary termination of parental rights to a tribal child, the agency planning for the child shall send notice of

the Indian child's condition and availability for adoption to the child's tribe at the time of the termination. If tribal affiliation has not yet been determined, then notice shall be sent immediately upon such determination, and the agency shall prepare and submit a report to the Indian Child Welfare Compliance Committee detailing why the determination was not made earlier in the proceedings as required by this Act.

(2) Any agency which accepts a commitment of a tribal child following a voluntary relinquishment of parental rights to a tribal child shall send notice of the child's condition and availability for adoption to the child's tribe before any action is taken toward the adoption of the child. If the agency has not established tribal affiliation at the time of release, it shall send notice immediately after a determination is made. The agency shall inquire about Indian ancestry of the child prior to the voluntary relinquishment of parental rights in a manner calculated to determine whether the child is a Tribal child.

Sec. 24. Access to agency files. At any stage of its involvement with a tribal child, the Department or any licensed child placement agency shall, upon request, give the tribal social services agency full cooperation including access to all files concerning the child. If the files contain confidential data, the Department may require execution of an agreement with the tribal social services agency that such agency shall maintain the data according to statutory provisions applicable to the data.

Sec. 25. Intervention in State Court Proceedings In any proceeding in state court for the foster care placement of, or termination of parental rights to, a tribal child, the Indian custodian of the child and the child's tribe shall have a right to intervene at any point in the proceeding.

Sec. 26. Pending State Court Proceedings (1) In any involuntary proceeding in state court, where the court knows or has reason to know that a tribal child is involved, the party seeking the

foster care placement of, or termination of parental rights to, a tribal child shall notify the parent or Indian custodian and the child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian cannot be determined, such notice shall be given to the Secretary of the Interior as provided in 25 U.S.C. a. 1912 (A). No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the Tribe or the Secretary of the Interior; provided, that the parent or Indian custodian or the Tribe shall, upon request, be granted up to twenty additional days to prepare for such proceedings.

(2) In any case in which a state court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding.

(3) Each party to a foster care placement or termination of parental rights proceeding in state court involving a tribal child shall have the right to examine all reports or documents filed with the court upon which any decision with respect to such action may be based.

(4) Any party seeking to effect the foster care placement of, or termination of parental rights to, a tribal child under Michigan Law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Tribal child's family and that these efforts have proved unsuccessful.

(5) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(6) No termination of parental rights may be ordered in such proceedings in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian unlikely to result in serious emotional or physical damage to the child.

Sec. 27. Return of Custody (1) Whenever a final decree of adoption of a tribal child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of Section 26, that such return of custody is not in the best interests of the child.

(2) Whenever a Tribal child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this title, except in the case where a tribal child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

Sec. 28. Tribal Affiliation Information Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the Tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Sec. 29. Improper Removal of Child from Custody Where any petitioner in a child custody proceeding involving a Tribal child before a state court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to the child's

parents or Indian custodian unless doing so would subject the child to a substantial and immediate danger or threat of such danger.

Sec. 30. Emergency Removal of Placement of Child Nothing in this title shall be construed to prevent the emergency removal of a Tribal child who is a resident of or domiciled on a reservation, but temporarily located off the reservation, from such child's parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. The state authority, official or agency involved shall insure that the emergency removal PR placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, Transfer the child to the jurisdiction of the appropriate tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

B. Provisions Dealing With All Federally Recognized Tribes.

Sec. 31. Applicability of Federal Indian Child Welfare Act.

(1) The State of Michigan recognizes the applicability of the federal Indian Child Welfare Act, 25 U.S.C. s. 1901 et seq., to child custody proceedings as defined in that Act involving the children of federally recognized tribes. The Department, licensed child placement agencies, and state courts shall comply with the provisions of the Indian Child Welfare Act. The provisions of this Act are supplementary to the Indian Child Welfare Act, and nothing herein shall be construed as a modification or abrogation of any duty or protection imposed by the Indian Child Welfare Act.

(2) In accordance with Section 111 of the Indian Child Welfare Act, 25 U.S.C. s. 1921, in any case in which the law of the State of Michigan applicable to a child custody proceeding provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights



provided under the Indian Child Welfare Act, the courts of this state shall apply the Michigan standard.

Sec. 32. Exclusive Jurisdiction in Tribal Court. A federally recognized tribe has exclusive jurisdiction over a child custody proceeding involving a child of a federally recognized tribe who resides or is domiciled within the reservation of such tribe. When a child of a federally recognized tribe is in the legal custody of a person or agency pursuant to an order of a tribal court in such a proceeding, or when the child is a ward of the tribal court, the tribal court shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

Sec. 33. Effect of Tribal Court Placement Orders. To the extent that any child of a federally recognized tribe subject to this Act is otherwise eligible for social services, orders of a tribal court concerning placement and services for such child shall have the same force and effect as orders of a probate court of this state. A child who is subject to tribal court jurisdiction shall not thereby lose or become ineligible for any services for which the child would otherwise be eligible.

C. Provisions Dealing With Michigan Federally Recognized Tribes.

Sec. 34. Conditions for Placement Payments. (1) For any out of home placement of a child of a Michigan federally recognized tribe made by a tribal court, the Department shall receive documentation that each of the following conditions, has been met in order to pay the costs of care for the Tribal child subject to the court's order:

(a) The child is subject to the jurisdiction of the tribal court;

(b) The order for out of home placement is based on a finding that all reasonable efforts have been made to prevent the need for removal of the child and to rectify the need for removal of the child from his/her home;

(c) A case plan has been devised to reunify the child with his/her parents or Indian custodian, which is administratively reviewed by the agency having custody at least every three (3) months;

(d) Judicial review of the child's placement is made at least every six (6) months, which includes a determination of:

(1) the continuing necessity for and appropriateness of the placement;

(2) the extent of compliance with the permanency plan (case plan) by the child's parent, the child, and the custodial agency;

(3) the progress toward eliminating the causes for the child's placement and toward returning the child; and

(4) the date by which it is likely that the child will be returned home or otherwise permanently placed.

(e) The foster home or group home in which the child is placed is licensed by a Michigan federally recognized tribe or by the Department.

(f) In the event that a child of a Michigan federally recognized tribe is placed in a residential treatment facility, the Department shall also satisfy itself that the placement is the least restrictive that could be made for the child, consistent with the child's needs.

(g) The tribe shall also maintain adequate financial, administrative or other records sufficient to comply with any applicable federal standards that the Department must meet in order to be eligible for federal reimbursement or which are otherwise required by the federal government.

(2) In the event the Department of Social Services has legal custody of a Tribal Child, and that child is placed with a tribally licensed or approved foster home, the State shall pay the costs of foster care in the same manner and to the same extent the State pays the costs of foster care to state-licensed or state-approved foster homes, provided that the tribe shall have entered into an agreement with the State pursuant to Section

35 herein, which shall require tribal cooperation with state plans required by Federal funding laws.

Sec. 35. Tribal Placement Authority. The Department shall recognize the authority of a Michigan federally recognized tribe to:

(1) Provide care and services to Indian children and their families subject to the tribe's jurisdiction; and

(2) Place, arrange the placement of, or assist in the placement of Indian children for foster care or adoption.

Sec. 36. Agreements with Michigan Federally Recognized Tribes.

(1) The Department shall, upon request of a Michigan federally recognized tribe, negotiate an agreement with the tribe for the payment of an administrative rate attributable to the cost of supervision of placements of tribal children committed to the care and custody of the tribe's social service agency. Nothing in this subsection shall affect the process by which the Department establishes administrative rates with licensed child placement agencies.

(2) The Department is authorized to enter into agreements with Michigan federally recognized tribes regarding care and custody of Indian children and jurisdiction over child custody proceedings, as authorized by 25 U.S.C. Sec. 1919, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between the state and a Michigan federally recognized tribe.

D. Provisions Dealing With Michigan Recognized Tribes.

Sec. 37. Designation of Michigan Recognized Tribes. (1) The Commission is authorized to designate entities as Michigan recognized tribes for purposes of this Act under the terms and conditions set forth in this section.

(2) The Commission may designate an entity as a Michigan recognized tribe if the entity meets the following criteria:

(a) The entity is not a federally recognized tribe;

(b) The entity has established membership criteria which limit membership to persons who trace their ancestry to an Indian tribe or band which was a party to a treaty with the federal government and which tribe or band ceded land which is now located within the State of Michigan;

(c) The membership criteria are not substantially similar to or overlapping with those of a federally recognized tribe or another Michigan recognized tribe;

(d) The entity has been identified both historically and at present as American Indian, and currently maintains tribal political influence over its members;

(e) The entity has a written governing document which fully describes its membership criteria and procedures;

(f) The entity maintains a membership roll listing all known current members of the entity based upon evidence that each member meets the entity's own membership criteria; and

(g) The entity has designated a mailing address and a person responsible for receiving notices under this Act and responding to inquiries about membership or eligibility for membership.

(3) An entity seeking recognition under this section shall submit a petition to the Commission along with evidence showing that each of the criteria in sub. (2) is met. The Commission may prescribe the form of the petition and may further define procedures to be followed, which need not include an evidentiary hearing. The Commission shall promptly provide notice of the pendency of the petition to the Department and to each Michigan federally recognized tribe and Michigan recognized tribe. The Commission shall meet to consider a petition as soon as practicable after submission of the petition, but in no event later than 180 days following the submission of the petition.

(4) If the Commission finds that the criteria of sub. (2) have been met, it shall issue an order designating the entity as a Michigan recognized tribe for purposes of this Act. Upon entry of the order, the entity shall be considered a Michigan

recognized tribe for purposes of this Act. The order shall be forwarded to the Department, which shall distribute it internally and to all probate courts, county departments of social services, tribal social services agencies and licensed child placement agencies within the state.

(5) If the Commission finds that the criteria of sub. (2) have not been met, it shall issue an order denying the petition which shall be accompanied by a written decision explaining the reasons for the denial.

(6) Any tribe or entity seeking recognition under this section which is aggrieved by a final decision or order of the Commission rendered pursuant to this section may appeal such decision or order as provided by law; provided, that such appeal shall be filed within 60 days of the rendering of such order or decision.

(7) The Commission shall annually prepare and file within 60 days of the end of each fiscal year a report to the Indian Child Welfare Compliance Committee indicating the number of petitions filed pursuant to this section, their disposition, and the length of time required to process each petition.

(8) Each Michigan recognized tribe shall continuously maintain with the Commission a current appointment of an agent for service of notice as required in this Act and for providing information to agencies regarding membership or eligibility for membership. The appointment shall include a mailing address and telephone number. Failure to maintain a current appointment shall be grounds for revocation of recognition under this section by the Commission.

**G. Provisions Dealing With Canadian Bands.**

**Sec. 38. Transfer of Proceedings Involving Children of Canadian Bands.** In any state court proceeding subject to this Act, the court, in its discretion and if the best interests of the Indian child would be served thereby, may transfer such proceeding to the jurisdiction of the Canadian band or other

Canadian court of competent jurisdiction, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe; provided, that such court accepts jurisdiction over the child.

F. Provisions Dealing With Other Persons of Indian Ancestry.

Sec. 39. Culturally Appropriate Placements. The Department or any licensed child placement agency shall consider Indian ancestry and cultural identification in making a foster care or adoptive placement of a child who does not meet the definitional requirements of an Indian child in this act, so that a family of similar Indian ancestry or cultural identification may be preferred. Other factors shall also be considered in selecting a foster or adoptive family. These factors include:

- (a) Special physical and emotional needs of the child.
- (b) The case plan which includes a goal of permanence for the child.
- (c) Proximity to the child's family.
- (d) Placement with siblings.
- (e) Placement with relatives.
- (f) Maintaining continuity of current relationships:
  - (i) Placement with the child's psychological parents.
  - (ii) Placement that enables the child to maintain relationships with friends, teachers, etc.
- (g) The child's religious preferences.
- (h) The child's wishes, particularly if the child is fourteen (14) or older.

The weight given any one factor or combination of factors will vary according to the best interests of the child and the type of placement, foster care or adoption.

Section 2. Section 5 of Act No. 195 of the Public Acts of 1972, being section 16.715 of the Michigan Compiled Laws, is amended by adding a sub. (i) and (j) to read as follows:

- (i) designate Michigan recognized tribes as provided in sec. 36 of The Michigan Indian Family Preservation Act of 1992.

(j) promulgate such rules and regulations as may be necessary to carry out the functions now or hereafter vested in the commission.

Section 3. Section 7 of Act No. 238 of the Public Acts of 1975 as amended by Act No. 511 of the Public Acts of 1980 and Act No. 418 of the Public Acts of 1984, being section 722.627 of the Michigan Compiled Laws, is amended to read as follows:

(1)(e) A person, agency or organization, including a multidisciplinary team or a tribal social service agency exercising responsibility under the Michigan Indian Family Preservation Act of 1991, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record under this act, or who is responsible for the child's health or welfare.

(k) The Indian Child Welfare Compliance Committee and Department staff assigned to the compliance program as provided in Sec. 4 of the Michigan Indian Family Preservation Act of 1992.

Section 4. Section 3 of Act 220 of the Public Acts of 1935, as amended, being section 400.203 of the Michigan Compiled Laws, is amended to read as follows:

\* \* \*

(a)

\* \* \*

(2) by the Probate Court, if the child is a ward of said court and the court has denied an order of adoption for said child, or

(3) by the court of a federally recognized Indian tribe located within the boundaries of Michigan, if the child is abandoned by his parents, guardian or other custodian, or is otherwise without proper custody and guardianship, or if the child's home or environment, by reason of neglect, cruelty, criminality, or depravity on the part of the parents, guardian or other custodian, is an unfit place for such child to live in.

Section 5. Sections 2 and 5 of Act 150 of the Public Acts of 1974, as amended, being sections 803.302 and 803.305 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 2. as used in this Act:

\* \* \*

(B) "State Ward" means Any One of the following:

(III) A person accepted for care by the Department who is at least 12 years of age at the time committed to the Department by the court of a federally recognized Indian tribe located within the boundaries of Michigan, if the Act for which the youth is committed occurred before his or her seventeenth birthday.

Section 5. Except as provided in Section 19 of the Michigan Indian Family Preservation Act of 1992, The county from which the state ward is committed.....

Section 6. Section S115 and 115B of Act 280 of the Public Acts of 1939, as amended, being Sections 400.115 and 400.115B of the Michigan Compiled Laws, are amended to read as follows:

Sec. 115. Services to children and youth shall include:

(A) Operating Training Schools ... to provide an effective program of out-of-home care for delinquent or neglected children committed to or placed in the care and custody of the department by the probate courts, courts of general criminal jurisdiction, or courts of federally recognized Indian tribes located within the boundaries of Michigan, or, where provided by law, the voluntary action of parents or guardians.

Sec. 115b. (1) the Office shall assume responsibility for all children committed to the state department by the Juvenile Division of the probate court, court of a federally recognized Indian Tribe located within the boundaries of Michigan, or court of general criminal jurisdiction under the Youth Rehabilitation Services Act...

Section 7. The following provisions of Title II of this act, shall not apply to or affect a proceeding in state court for foster care placement, termination of parental rights,



preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the date of enactment, but shall apply to any subsequent proceeding in the same matter, including a permanency planning hearing pursuant to Section 19a of Act No. 288 of the Public Acts of 1939, as amended, being M.C.L. 712A.19a, or subsequent proceedings affecting the custody or placement of the same child: Sections 15 through 23, 25 through 30, and 39.

This act is ordered to take immediate effect.