

STATE OF MICHIGAN ICWA/MIFPA FIELD GUIDE



Michigan Department of Human Services (DHS),
Native American Affairs (NAA)

State Court Administrative Office - Child Welfare Services (SCAO),
Court Improvement Program (CIP)

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Resources

Field Guide Purpose

The purpose of the State of Michigan, Indian Child Welfare Act (ICWA), Michigan Indian Family Preservation Act (MIFPA) Field Guide is to assist staff in recognizing key concepts of ICWA/MIFPA case management and locating ICWA/MIFPA policy and resources.

The Michigan Indian Family Preservation Act (MIFPA), 2012, Public Act 565 (MCL 712B. 1 - 41), effective January 2, 2013, was enacted by the Michigan Legislature to clarify and strengthen the federal Indian Child Welfare Act (ICWA).

The ICWA/MIFPA Field Guide was not created to replace the federal law, state child welfare laws, or Michigan Court Rules regarding implementing the ICWA/MIFPA, NAA Policy Manual or tribal codes as applicable.

The following resources may help you implement ICWA/MIFPA:

Michigan Indian Family Preservation Act (MIFPA), 2012 Public Act 565 [http://www.legislature.mi.gov/\(S\(znidbt555sv0ha45hrkjocim\)\)/mileg.aspx?page=getObject&objectname=2012-SB-1232](http://www.legislature.mi.gov/(S(znidbt555sv0ha45hrkjocim))/mileg.aspx?page=getObject&objectname=2012-SB-1232)

Indian Child Welfare Act of 1978: A Court Resource Guide
<http://courts.michigan.gov/scao/resources/publications/manuals/cws/ICWActResourceGuide.pdf>

A Practical Guide to the Indian Child Welfare Act
www.narf.org

NAA Policy Manual (IOS/NAA/NAG/TAM)
DHS-Net & www.michigan.gov/dhs

NAA website and ICWA Poster
www.michigan.gov/americanindians

Native American Affairs (NAA) Tribal Service Area Matrix
www.michigan.gov/americanindians

ICWA Poster
www.michigan.gov/americanindians

Caseworkers have up to **three business days** to notify a tribe of a possible Indian child welfare case opening or investigation (NAA 200).
Best Practice: If tribal ancestry is known workers should contact the tribe immediately.

Indian Child Welfare Act/Michigan Indian Family Preservation Act

The federal Indian Child Welfare Act of 1978 at 25 USC § 1901-1963 and MCL 712B. 1 - 41 (MIFPA) seek to protect the best interests of Indian children, promote the stability and security of Indian tribes and families and establish minimum federal standards for removal and placement of Indian children.

Congress passed ICWA requiring nearly all American Indian/Alaskan Native (AI/AN) children taken out of their homes by social services officials to be placed with relatives or other tribal members. MIFPA seeks to assist workers with applying ICWA in Michigan courts and child welfare practice. Though children would remain in state care, the laws focus on keeping American Indian/Alaskan Native (AI/AN) families and tribes together.

To assist staff with improving safety, permanency and well-being for Indian families in care and federal/state compliance with ICWA/MIFPA, DHS & SCAO in collaboration with Michigan Tribes/Indian organizations, have established Native American Affairs (NAA) policy for ICWA case management and an SCAO ICWA Court Resource Guide (see resource links aforementioned).

Definitions

Indian Children (American Indian/Alaska Native)

An Indian child is a person under the age of 18 who is a member of the tribe or a person who is eligible for membership in an Indian tribe.

The tribe in which the child is a member or eligible for membership need not be the same tribe in which the parent is a member (NAA 100).

Note: Descendant families may be eligible for services in Michigan (i.e. Saginaw Chippewa Indian Tribe ICWA Agreement – DHS).

Child Custody Proceedings

MIFPA defines a child custody proceeding in MCL 712B.3(b) as including but not limited to: foster care placement, termination of parental rights, pre-adoption, adoption; guardianships under the Juvenile Code and under the Estates and Protected Individuals Code, see MCL 712B.3(k)(i)(b) & (C); and in certain cases for an Indian child charged under MCL 712A.2(a)(2)-(4) or (d) which could result in the out-of-home care or adoptive placement of an Indian child or termination of the parental rights to the Indian child. A child custody proceeding does not include a domestic proceeding (such as Divorce proceedings) or juvenile offenses when placement was based on an act that would be a crime if committed by an adult.

Juvenile Justice (JJ) Proceedings

ICWA/MIFPA applies in a delinquency proceeding depending on three factors: 1) the type of offense or crime, 2) whether the placement was based upon an act that would be a crime if committed by an adult, and 3) whether termination of parental rights is recommended, regardless of the type of offense committed by the juvenile. If the Indian child is charged with a status offense, ICWA applies (MCL 712A.2(a)(2)-(4) or (d)).



The Indian Child Welfare Act (ICWA) Field Guide was not created to replace the federal law, state child welfare laws, or Michigan Court Rules regarding implementing the ICWA, MIFPA, NAA Policy Manual or tribal codes as applicable.

Abuse And Neglect

When Centralized Intake (CI) receives a Children's Protective Services (CPS) complaint via phone and/or DHS 3200 form, and a child or family is determined to be affiliated with a tribe, the department **shall** contact the Tribal Social Service department or tribal representative responsible for Indian child welfare for that tribe for collateral contact and to determine jurisdiction. See DHS CPS/CI and NAA policy. Indian children who reside on the reservation are under the exclusive jurisdiction of the tribe unless an agreement between the state and tribe exists for CPS/FC/Adoption/After-Hours/JJ services (CI phone number: 1-855-444-3911).

Best Practice: DHS and tribal caseworkers collaborate for CPS investigation until jurisdiction is determined.

Emergency Removal

If an Indian child is in danger of imminent physical damage or harm, caseworkers must provide emergency intervention to ensure the child's safety, including emergency placement (NAA 235). When an Indian child lives on a reservation but is physically located off the reservation and the threat of harm is evident or about to occur if a child remains under the care/supervision of a parent, relative, legal guardian, or foster parent, a worker must seek the least restrictive ICWA placement, notify a Tribal Social Service worker or tribal representative and consult with the tribal contact for placement recommendations. An Emergency Removal hearing must occur within 24 hours.

Initial Assessment

For the agency to determine whether a child or family is an Indian family, it must be confirmed whether the child is a member or eligible for membership in a federally recognized tribe (descendant status may apply in some cases).

DHS policy and NAA websites contain the following forms that should be used in determining if ICWA applies: DHS 120 (U.S. Tribes); DHS 121 (Canadian Tribes - DHS Best-practice).

These forms are sent to the tribal contact via registered mail, return receipt. Michigan tribal contacts are located in this Field Guide. Other tribes can be found online:

- www.500nations.com (tribes);
- www.ncai.org;
- www.bia.gov (Bureau of Indian Affairs (BIA) federal tribes / regional BIA offices);
- <http://fnpim-cippn.aandc-aadnc.gc.ca/index-eng.asp> (Canadian Tribes/First Nations).

If clients do not know the name of the child's tribe: 1) send the information request forms to the Midwest BIA Regional Office, or if the tribe is not a Midwest tribe, send to the appropriate BIA Regional Office located at the aforementioned BIA site, and 2) send the DHS-120/DHS-121 and/or CPS complaint to the tribe(s) located in the county of client residence (see MIFPA MCL 712B.9 [3] and/or *In re Morris*).

Active efforts need to begin at the onset of the investigation and should continue throughout the investigation. Caseworkers have three days to assess family for Indian ancestry/identify and notify tribe and all applicable parties utilizing the DHS-120/DHS-121. Originals/copies of all ICWA documentation, mailing receipts, and tribal correspondence must be sent to the court for client file (see *In re Morris*). MIFPA defines active efforts for Michigan (See NAA 205 and MIFPA).

Best Practice: Ask the family if the child, parent or grandparents are "Indian." As the case moves forward, follow placement preferences and provide active efforts regarding preventing removal of the Indian child or to reunify the Indian family and prevent termination of parental rights.

Child Custody

DHS should facilitate tribal participation at the earliest hearing to reduce unnecessary disruption of placement for the child. Prior to the first hearing involving an Indian child, DHS shall notify the tribe. Send DHS-120 or DHS 121 forms to the appropriate tribe(s) via registered mail, return receipt. The return receipt must also be filed with the court (submit/include a copy to the court for case review and recommendations).

When it is determined that an Indian child will enter/remain in custody, the agency must initiate foster care placement preferences of ICWA/MIFPA:

- Home of an extended family member.
- Foster home licensed or approved/specified by the Indian child's tribe.
- Indian foster home licensed or approved by the department or a child welfare agency.
- Group home or institution for children and youth approved by an Indian tribe or operated by an Indian organization.

Different ICWA/MIFPA priorities exist for Adoption & Pre-Adoption Placements (see NAA 215 Placement Priorities for Indian Children and NAA 400 Indian Child Adoptions):

- Home of an extended family member.
- Tribal home of child's affiliation.
- Other tribal home (not child's affiliation).

If the Indian child's tribe established an order of placement preference, that preference shall be followed unless good cause to the contrary is determined by a court.

Active Efforts (MCL 712B.3)

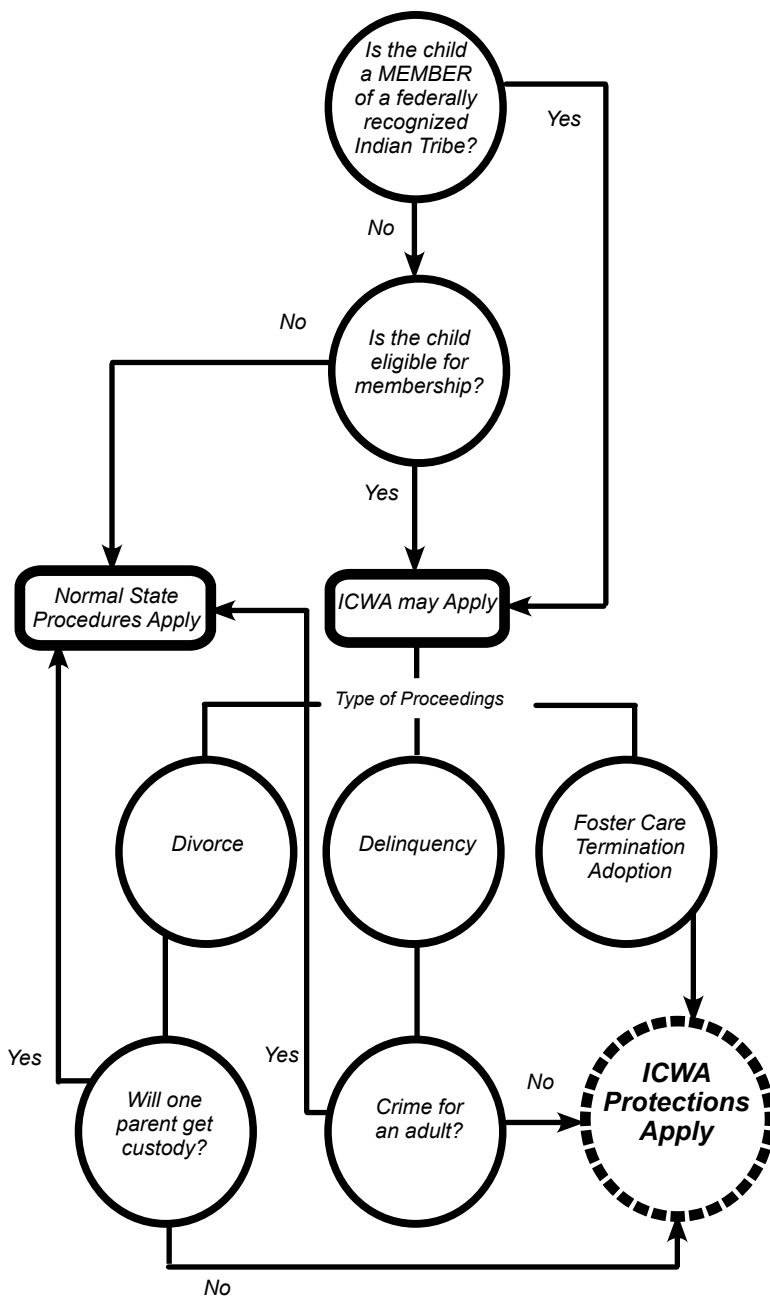
Once the Indian child case is opened and/or referred to activities in ongoing services, the agency must provide active efforts according to MIFPA or specified by tribe including but not limited to:

- Requesting the tribal agency to assist in evaluating the case and developing the service plan.
- Notifying and inviting representatives of the child's tribe to participate in custody proceeding and family meetings at the earliest point (Court Hearings and additional meetings such as an FTM).
- Notification and consultation of extended family members to provide structure and support (FTM).
- Providing family interaction/visitation.
- Offering and employing all available appropriate family preservation strategies.
- Offering community resources and actively assisting the family in accessing those resources.
- Monitoring progress and client participation in services provided.
- Identifying and overcoming any barriers that are limiting client participation in services.
- Providing alternative ways to address the family needs if services do not exist or are not available to the family.
- Providing culturally competent and relevant services.

Eligibility Guide

Use this diagram as a guide to determine ICWA/ MIFPA benefits eligibility.

A special thank you to the Native American Rights Fund for use of this diagram.



DHS Native American Affairs and Indian Outreach Services Directory

If you need IOS assistance, contact the office listed below (case requests from Field & PAFC [DHS-382] are approved by the IOS supervisor). For non-IOS counties, contact the local DHS county director to request assistance from an Indian Outreach Worker in a county nearest to the client (see NAA & IOS Map located on NAA website).

Native American Affairs

Stacey Tadgerson, Director
TadgersonS@michigan.gov
517-335-7782
P.O. Box 30037
235 Grand Avenue, Suite 601
Lansing, MI 48909

Baraga County

JoAnne Racette
RacetteJ@michigan.gov
906-353-4705
P.O. Box 10
108 Main Street
Baraga, MI 49908

Chippewa County

Donelda Harper
HarperD@michigan.gov
906-635-4140
463 East 3 Mile Road
Sault Ste. Marie, MI 49783

Delta County

Louise (Lulu) Beauchamp
BeauchampL@michigan.gov
906-789-7273
2940 College Avenue
Escanaba, MI 49829

Gogebic County

Daniel Roberts
RobertsD3@michigan.gov
906-663-6207
301 E. Lead Street
Bessemer, MI 49911

Isabella County

Vacant
989-772-8488
1919 Parkland Drive
Mt. Pleasant, MI 48858

Kent County

Grace Boda
BodaG@michigan.gov
616-248-1628
121 Franklin, SE
Grand Rapids, MI 49507

Luce County

Barbara Sharp
SharpB@michigan.gov
906-293-0121
P.O. Box 27500
Newberry, MI 49868

Mackinac County

Ronda Engle
EngleR@michigan.gov
906-643-6115
199 Ferry Lane
Ignace, MI 49781

Marquette County

Vacant
906-228-0749
234 W. Baraga Avenue
Marquette, MI 49855

Menominee County

Wendy Mojzych
Mojzychw@michigan.gov
906-863-1406
2612 Tenth Street
Menominee, MI 49858

Van Buren County

Greg Morsaw
Indian Outreach Worker
morsawg@michigan.gov
269-621-2802
P.O. Box 7CR. 681
Hartford, MI 49057

Wayne County

Michelle White
WhiteM2@michigan.gov
313-456-3005
Cadillac Place - Suite 5-300
3040 W. Grand Boulevard
Detroit, MI 48202

ICWA Caseworker

Grand Traverse County

Lisa Garcia
GarciaL2@michigan.gov
231-941-3900
701 S. Elmwood, Suite 19
Traverse City, MI 49684

Counties Included in Tribes' Service Delivery Area



County listed as "Location of Tribe" is in parentheses.

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