

# ICWA/MIFPA ~ Proceedings Involving Indian Child

## Judicial Bench Card

MCR 3.002, 3.800, 3.807, 3.905, 3.967, 5.404 | MCL 712B.1-41 | USC 1901-1963

*The Michigan Indian Family Preservation Act (MIFPA) establishes standards and procedures for cases involving Indian children. MIFPA does not replace the federal Indian Child Welfare Act; therefore, jurists and legal professionals must apply both laws. The protections of both laws apply only to federally recognized tribes. The law providing the highest standard of protection must be applied.*

### When to use this Bench Card

Use this bench card when the court knows, or has reason to know, that the case may involve an Indian child. This bench card is part of a set and supplements the other child protection proceeding bench cards when a case involves an Indian child.

### Notice Requirements

MDHHS must actively seek to determine if a child is an Indian child.

Court must make inquiry at each hearing. In re Morris. An Indian child's tribe and family must have an opportunity to be involved in the decisions affecting services for the child.

If the tribe's identity is unknown, the petitioner must notify the Secretary of the Interior (BIA). MDHHS must contact in writing the tribe or tribes located in the county where the child is located. [MCL 712B.9 \(3\)](#).

No foster care placement or termination of parental rights proceeding may occur until at least 10 days after the parent, Indian custodian and tribe receive notice. The parent, Indian custodian, or tribe may request an additional 20 days to prepare.

Tribal intervention and participation is a right.

### Placement Standards

Foster care or pre-adoptive placement guidelines (in order of preference) unless the Indian child's tribe has different preferences, [MCL 712B.23\(6\)](#):

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

Adoptive placement guidelines (in order of preference):

- A member of the child's extended family.
- A member of the child's tribe.
- An Indian family.

### Definitions/Applicability

*Indian child:* An unmarried person who is under the age of 18 years and is either of the following: 1) A member of an Indian tribe OR 2) Eligible for membership in an Indian tribe as determined by that tribe.

- The child does not have to reside on the reservation for the laws to apply.

*Child Custody Proceedings:*

- Foster care placements
- Pre-adoptive placements
- Guardianship (including EPIC)
- Adoptive placements
- Status Offenses
- Termination of parental rights

*Jurisdiction:*

- Tribes have exclusive jurisdiction over an Indian child who resides or is domiciled within the tribe's reservation, unless that child is temporarily located off the reservation and limited emergency jurisdiction is necessary to prevent imminent physical damage or harm to the child. The emergency jurisdiction ends when the removal or placement is no longer necessary to prevent the imminent physical damage or harm.
- If a child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction, regardless of the residence or domicile, or subsequent change in residence or domicile.
- For an Indian child not domiciled or residing on the reservation, the parent, Indian custodian, or tribe may request the case be transferred to tribal court. The court must transfer the case, unless there is good cause not to, if either parent objects, or the tribal court declines the transfer.

*Active Efforts:* Ongoing, vigorous, and concerted level of case work that takes into account the prevailing social and cultural values, conditions, and way of life of the tribe and that uses the available resources of the tribe, tribal and other Indian child welfare agencies, extended family members, other Indian caregivers, and other culturally appropriate service providers. [MCL 712B.3\(a\)](#).

**Continued on reverse**

# ICWA/MIFPA ~ Proceedings Involving Indian Child Cont. Judicial Bench Card

MCR 3.002, 3.800, 3.807, 3.905, 3.967, 5.404 | MCL 712B.1-41 | USC 1901-1963

## Removal From Home Standards

The court must find by clear and convincing evidence based on testimony from a qualified expert witness that the child would be at risk of serious physical or emotional damage unless removed.

Court must find that active efforts were made to prevent the removal.

## Qualified Expert Witness (QEW)

A qualified expert witness may be either of the following (in order of preference): [MCL 712B.17](#)

- A member of the child's tribe, recognized as knowledgeable in tribal customs and how they pertain to family organization and child rearing practices.
- A person with knowledge, skill, experience, training, or education and who can speak to the child's tribe and its customs and how they pertain to family organization and child rearing practices.

## Termination of Parental Rights

The court must find evidence beyond a reasonable doubt, including testimony from at least one QEW, that continued custody with the parent is likely to result in serious emotional or physical damage to the child.



## Overview of Heightened Standards

**Active efforts** were made to prevent the Indian child's removal from home.

**Clear and convincing evidence**, based on qualified expert witness testimony, that the child may face **serious physical or emotional damage** unless removed.

Termination of parental rights: **evidence beyond a reasonable doubt**, including testimony from at least one qualified expert witness, that continued custody with the parent is likely to result in **serious emotional or physical damage to the child**

## Key MIFPA/ICWA Specific Findings

Whether the child has any tribal heritage.

If so, whether the tribe the child is a member of, or may be eligible for membership in, is known?

If known, was notice provided to the tribe? If not known, was notice provided to the Secretary of the Interior? When was notice sent, have 10 days passed? Was notice provided to the parents, or to the Indian Custodian if applicable?

Whether there is evidence of efforts to comply with the placement preferences (ongoing).

Whether ICWA/MIFPA does or may apply to this case.

Whether at the time of the removal the child was already a ward of a tribal court (if known) thereby depriving the state court of jurisdiction.

Whether the child is domiciled or living on a reservation but temporarily located off the reservation.

Whether active efforts were made prior to the removal of the child.

Whether protective custody was necessary to prevent imminent physical damage or harm to the child, for child temporarily off the reservation.

Whether there is clear and convincing evidence the child is likely to suffer serious emotional or physical damage if continued in the custody of the parent or Indian Custodian.

Whether qualified expert witness testimony to support out-of-home placement was provided.

Whether the placement preferences are being followed. If not, why not and is there good cause not to follow them?



Please see the 2017 [ICWA/MIFPA Court Resource Guide](#) for more comprehensive guidance.



Please see the [MJI Quick Reference Flow Charts](#) for topic based information.



Please also see the [American Indian Child Placement & Evidence Standards Chart](#).