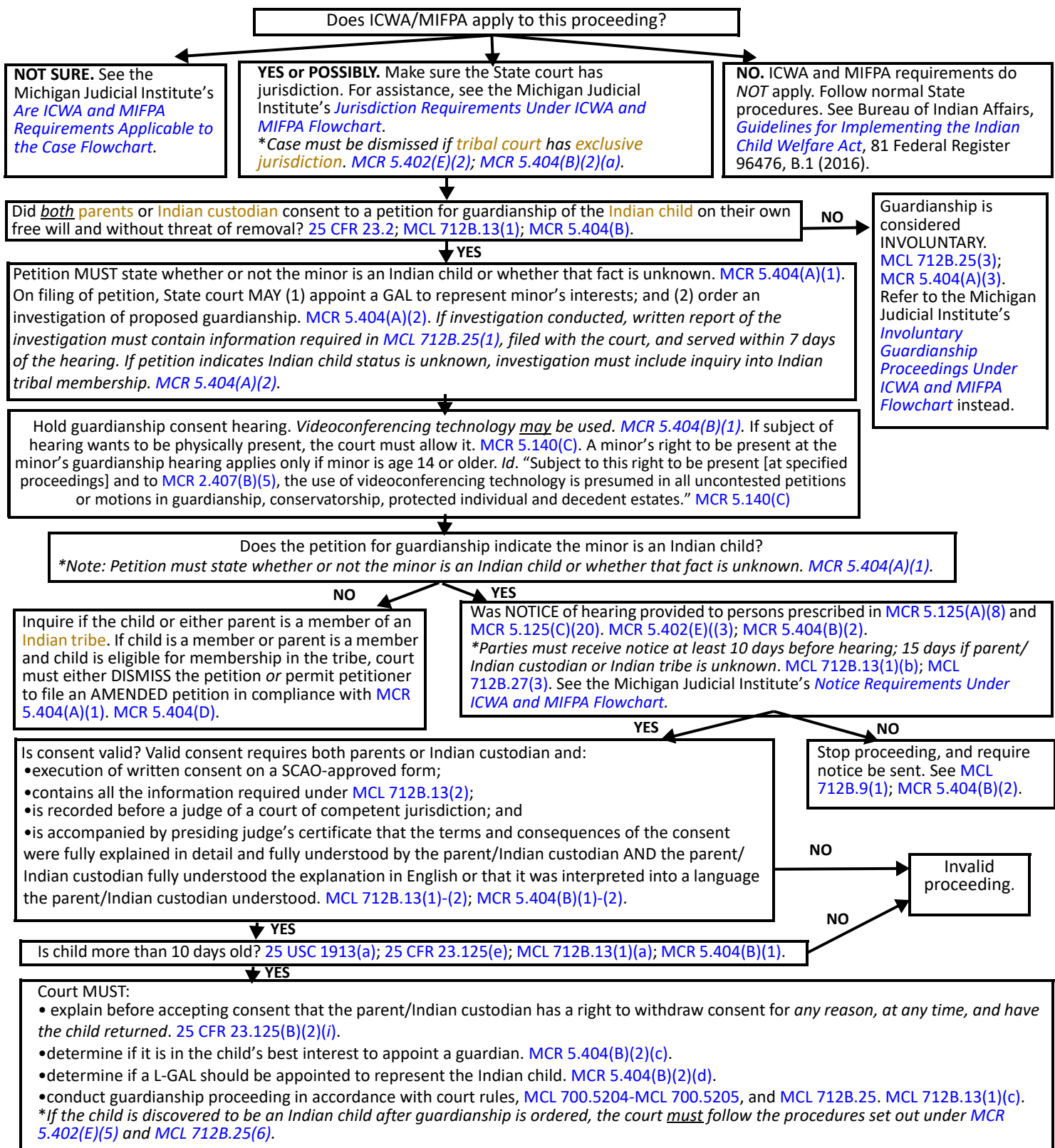


Flowchart: Voluntary Guardianship Proceedings Under ICWA and MIFPA¹



¹ See the Michigan Judicial Institute's *Adoption Proceedings Benchbook* and *Child Protective Proceedings Benchbook* for more information.

Glossary

C

Child custody proceeding

- For purposes of an **Indian child**, *child custody proceeding* “includes, but is not limited to, 1 or more of the following:

(i) Foster care placement. Any action removing an Indian child from his or her **parent** or **Indian custodian**, and where the parent or Indian custodian cannot have the Indian child returned **upon demand** but parental rights have not been terminated, for temporary placement in, and not limited to, 1 or more of the following:

(A) **Foster home or institution.**

(B) The home of a guardian or limited guardian under . . . the estates and protected individuals code, . . . [MCL 700.5201](#) to [\[MCL\] 700.5219](#).

(C) A juvenile guardianship under [\[MCL 712A.19a](#) or [MCL 712A.19c](#)].

(ii) Termination of parental rights. Any action resulting in the termination of the parent-child relationship.

(iii) Preadoptive placement. Temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but before or in lieu of adoptive placement.

(iv) Adoptive placement. Permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption.

(v) An Indian child is charged with a **status offense** in violation of [\[MCL 712A.2\(a\)\(2\)-\(4\)\]](#) or [\[MCL 712A.2\(d\)\]](#).

(vi) Child custody proceeding does not include a placement based on an act that, if committed by an adult, would be a crime or based on an award, in a divorce proceeding, of **custody** to 1 of the parents.” [MCL 712B.3\(b\)](#).

See also [25 USC 1903\(1\)](#) and [MCR 3.002\(2\)](#), which both contain substantially similar definitions of *child custody proceeding*; [25 CFR 23.2](#), which contains a substantially similar definition of *child custody proceeding* except that it uses the phrase “may culminate in one of the following outcomes,” rather than the phrase “includes” and specifically excludes **emergency proceeding** from the definition.

Custody

For purposes of an **Indian child**, *custody* is “physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State

law. A party may demonstrate the existence of custody by looking to Tribal law or Tribal custom or State law.” [25 CFR 23.2](#).

E

Emergency proceeding

- For purposes of an **Indian child**, *emergency proceeding* “means and includes any court action that involves an emergency removal or emergency placement of an Indian child.” [25 CFR 23.2](#).

Exclusive jurisdiction

- For purposes of an **Indian child**, *exclusive jurisdiction* is “an **Indian tribe**[’s] . . . jurisdiction exclusive as to any state over any **child custody proceeding** as defined [in [MCR 3.002\(2\)](#)] involving an Indian child who resides or is domiciled within the **reservation** of such tribe, except where such jurisdiction is otherwise vested in the state by existing federal law. Where an Indian child is a **ward of a tribal court**, the **Indian tribe** retains exclusive jurisdiction, regardless of the residence or domicile or subsequent change in his or her residence or domicile.” [MCR 3.002\(6\)](#).

F

Foster home or institution

- For purposes of an **Indian child**, *foster home or institution* is “a child caring institution as that term is defined in . . . [MCL 722.111](#).” See also [MCR 3.002\(8\)](#), which contains a substantially similar definition of *foster home or institution*. [MCL 712B.3\(g\)](#).

I

Indian child

- An *Indian child* is “an unmarried person who is under the age of 18 and is either of the following:
 - (i) A member of an **Indian tribe**.
 - (ii) Eligible for membership in an Indian tribe as determined by that Indian tribe.” [MCL 712B.3\(k\)](#).

See also [MCR 3.002\(12\)](#), which contains a substantially similar definition of *Indian child*; [25 USC 1903\(4\)](#), which contains a substantially similar definition except that it also requires that the Indian child “[be] eligible for membership in an Indian tribe and [be] the biological child of a member of an Indian tribe,”² (emphasis added); [25 CFR 23.2](#), which contains a substantially similar definition of *Indian child* as [25 USC 1903\(4\)](#)

² See also *In re KMN*, 309 Mich App 274, 287 (2015) (noting that “[t]he definition of ‘Indian child’ in MIFPA is similar to ICWA, but does not require the child, who is eligible for membership, to also be the biological child of a member of an Indian tribe”).

except that it uses the term *citizen* and *citizenship* synonymously with *member* and *membership*.

Indian custodian

- For purposes of an **Indian child**, *Indian custodian* is “any Indian person who has custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the Indian child’s **parent**.” [MCL 712B.3\(n\)](#). See also [25 USC 1903\(6\)](#) and [MCR 3.002\(15\)](#), which both contain substantially similar definitions of *Indian custodian*; [25 CFR 23.2](#), which contains a substantially similar definition of *Indian custodian* except that it also permits an Indian to “demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.”

Indian tribe or tribe

- For purposes of an **Indian child**, *Indian tribe* or *tribe* is “any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska native village as defined in . . . [\[43 USC 1602\(c\)\]](#).” [MCL 712B.3\(o\)](#). See also [25 USC 1903\(8\)](#), [MCR 3.002\(17\)](#), and [25 CFR 23.2](#), which contain substantially similar definitions of *Indian tribe*.

P

Parent

- For purposes of an **Indian child**, *parent* is “any biological parent or parents of an Indian child or any person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. *Parent does not include the putative father if paternity has not been acknowledged or established.*” [MCL 712B.3\(s\)](#) (emphasis added). See also [25 USC 1903\(9\)](#), [MCR 3.002\(20\)](#), and [25 CFR 23.2](#), which contain substantially similar definitions of *parent*, except that, where the Indian child has been adopted, they all require the adopter to be an Indian.

R

Reservation

- For purposes of an **Indian child**, *reservation* is “Indian country as defined in [18 USC 1151](#) and any lands, not covered under that section, title to which is held by the United States in trust for the benefit of any **Indian tribe** or individual or held by any Indian Tribe or individual subject to a restriction by the United States against alienation.” [25 CFR 23.2](#). See also [25 USC](#)

1903(10), [MCL 712B.3\(t\)](#), and [MCR 3.002\(21\)](#), which contain substantially similar definitions of *reservation*.

S

Status offenses

- For purposes of an **Indian child**, *status offenses* are “offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person’s status as a minor (e.g., truancy, incorrigibility).” [25 CFR 23.2](#).

T

Tribal court

- For purposes of an **Indian child**, *tribal court* is “a court with jurisdiction over **child custody proceedings** that is either a court of Indian offenses, a court established and operated under the code or custom of an **Indian tribe**, or any other administrative body of a tribe that is vested with authority over child custody proceedings.” [MCL 712B.3\(v\)](#). See also [25 USC 1903\(12\)](#), [MCR 3.002\(23\)](#), and [25 CFR 23.2](#), which contain substantially similar definitions of *tribal court*.

U

Upon demand

- For purposes of an **Indian child**, *upon demand* allows “the **parent** or **Indian custodian** [to] regain custody [of the child] simply upon verbal request, without any formalities or contingencies.” [25 CFR 23.2](#).

W

Ward of tribal court

- For purposes of an **Indian child**, *ward of tribal court* is “a child over whom an **Indian tribe** exercises authority by official action in **tribal court** or by the governing body of the tribe.” [MCL 712B.3\(w\)](#). See also [MCR 3.002\(24\)](#), which contains a substantially similar definition of *ward of tribal court*.