



2017

**Michigan Indian Family Preservation
Act of 2013 and Indian Child Welfare
Act of 1978:**

A Court Resource Guide

**Michigan Court Improvement Program
Tribal Court Relations Committee
State Court Administrative Office**



FOREWORD

This is one of the most rewarding projects I've experienced in my years as liaison Justice for the Native American tribes. The extensive participation of the tribes, the spirit of cooperation that permeated the committee, and the landmark product that emerged from these efforts leave me filled with hope for the future of state and tribal court relations.

Justice Michael F. Cavanagh

The 2009 Court Resource Guide would not have been possible without the generous collaborative efforts of the following people:

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Introduction

In 2009, the Michigan Supreme Court's Court Improvement Program formed the Tribal Court Relations Committee formed to educate Michigan judges about the federal Indian Child Welfare Act of 1978, address the need for states to comply with the Act, to discuss its implementation in Michigan, and draft the original version of this court resource guide.

At that time, some committee members asked, "Why now?" Why did the Court and the State Court Administrative Office (SCAO) wait more than 30 years to take a close look at the Indian Child Welfare Act (ICWA)? The answer has several components. First, SCAO's Child Welfare Services division (CWS) began receiving more questions about our state's compliance with this federal law. Second, CWS began participating in the Tribal State Partnership, a forum for the Michigan Department of Human Services (now Michigan Department of Health and Human Services or MDHHS) and the twelve federally recognized tribes in Michigan. Third, the resulting discussions with local MDHHS personnel and tribal representatives made clear the need for a serious examination of how our state courts apply (or ignore) ICWA. Those events caused the Michigan Supreme Court to create this special committee and ask it to craft a court resource guide designed to provide practical ICWA advice to our state courts.

Congress passed ICWA in 1978 as a response to then-prevalent culturally insensitive state government child welfare practices that negatively impacted "Indian children" (a term defined in ICWA), their families, and their tribes. Indian children who grow up in non-Indian homes lose touch with their cultural and spiritual roots. ICWA aims to ensure that Indian children are removed from their parents only after carefully crafted efforts have been made to maintain the Indian family. This guide will help state courts to understand ICWA's concepts and how they interact with Michigan's laws governing child welfare, guardianships, and adoptions.

Also in 2009, a subcommittee of the larger CIP Tribal Court Relations Committee evaluated Michigan's court rules and recommended that the Michigan Supreme Court rescind MCR 3.980 (then Michigan's only court rule that referred to ICWA), and insert ICWA-specific provisions throughout all the court rules that address child abuse and neglect proceedings, guardianships, some juvenile cases, and adoptions – all of which are proceedings to which ICWA applies to some degree. Those recommended changes were adopted by the Michigan Supreme Court in January 2010, and became effective May 1, 2010.

In 2012, the CIP Tribal Court Relations Committee met to draft a state law that passed the state legislature and became effective in 2013. As one of eight comprehensive state ICWA laws, the Michigan Indian Family Preservation Act (MIFPA) has become a model for other states and even the federal government when it drafted the 2015 Bureau of Indian Affairs Guidelines for State Courts. These Guidelines, updated for the first time since 1979, mirror many of the provisions of Michigan's state law. This updated Guide includes information on ICWA, MIFPA, and the 2016 federal Regulations, with a focus on Michigan's own state law that governs how state courts must handle child custody proceedings involving "Indian children."

Finally, MIFPA defines “best interests” of the Indian child to guide all of the state judges and workers who have the privilege to be a part of these children’s lives:

[t]he best interests of the Indian child shall be determined, in consultation with the Indian child's tribe, in accordance with the Indian child welfare act, and the policy specified in this section. Courts shall do both of the following:

(a) Protect the best interests of Indian children and promote the stability and security of Indian tribes and families.

(b) Ensure that the department uses practices, in accordance with the Indian child welfare act, this chapter, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian children and, when an out-of-home care placement, adoptive placement, or preadoptive placement is necessary, place an Indian child in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.

MCL 712B.5

Questions or concerns about this guide may be directed to CWS staff, whose contact information appears in the Conclusion section.

MIFPA and ICWA Fundamentals

This guide (“Guide” or “Resource Guide”) provides assistance to Michigan judges interpreting and applying the Michigan Indian Family Preservation Act (MIFPA), [MCL 712B.1-41](#), the Indian Child Welfare Act of 1978 (ICWA or “Act”), [25 USC 1901 - 1963](#), the federal regulations, Indian Child Welfare Act, [81 FED REG 38864](#) (June 14, 2016)(to be codified at 25 CFR pt. 23)(“Final Rule”), and the less formal but more specific guidance provided by the US Department of the Interior, Bureau of Indian Affairs (BIA) in its *Guidelines for State Courts and Agencies In Indian Child Custody Proceedings* (“[BIA GUIDELINES](#)”) (December 12, 2016).

This guide follows the citation format of the Michigan Appellate Opinion Manual. Administrative Order No. 2014-22, 497 Mich ____ (2014). The Final Rule will be cited to the Federal Register, as it will not be codified into the Code of Federal Regulations until April, 2017.

This preliminary section, titled “MIFPA and ICWA Fundamentals,” discusses several universal terms and concepts that apply to all ICWA proceedings. Judges must know the types of proceedings to which the Acts apply, the proper parties to an ICWA and MIFPA case, those parties’ respective burdens of proof, and the benefits of collaborating with the Department of Health and Human Services (MDHHS) and the child’s tribe in ICWA cases. That knowledge allows courts to apply ICWA and MIFPA correctly and uniformly throughout Michigan.

A Note About the Legal Authorities Discussed in this Resource Guide

ICWA is the federal law that governs child welfare proceedings involving Indian children in all state courts across the country. MIFPA is a Michigan state law that enhances and clarifies the federal law, providing higher protections to Indian families, pursuant to 25 USC 1921. As with all state laws, it is binding in state courts, and governs how Michigan state courts and agencies handle child welfare cases involving Indian children. In addition, the federal government promulgated new federal regulations, or a Final Rule, governing state court implementation of ICWA. These regulations became binding on state courts with an effective of December 12, 2016. Regardless, of all the authorities, MIFPA is Michigan’s state law, passed by Michigan’s legislature, for the protection of Michigan’s Indian children. All three authorities, and Michigan case law (to date), are included in this Resource Guide. When in question, both ICWA and the Final Rule state that in any case where state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian, the court shall apply the higher standard. 25 USC 1921, Final Rule, 81 Fed Reg at 38,869. Both federal authorities are also clear that the federal standards are the *minimum* standards for Indian families. If a state authority provides higher standards, that state authority governs. *Id.* Finally, the BIA issued new [GUIDELINES](#) in December, 2016. These Guidelines do not have the authority of state law, but Michigan courts do use them for guidance. See, e.g., *In re Morris*, 491 Mich 81; 815 NW2d 62 (2012). The [2016 GUIDELINES](#) may be used to clarify questions not answered by MIFPA, ICWA, or the Final Rule.

Why Does This Guide Refer to “Indian” Children and “Tribes” Instead of “Native American” Children and “Bands”?

MIFPA and ICWA use the terms “Indian,” starting with the state and federal acts’ official titles, and “Tribe”. For consistency, this guide uses the Acts’ terminology; Michigan state courts should do the same. In order for the Acts to apply, the court must find the child is an Indian child, and the proceeding falls under either Act’s definition of a child custody proceeding.

I. Indian Child

Only an Indian tribe can determine whether a child is a member of that tribe and, thus, an “Indian child” for purposes of MIFPA and ICWA. Each tribe in the country has its own unique membership requirements. 25 USC 1903(4) defines “Indian child” to mean: any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe *and* is the biological child of a member of an Indian tribe. (emphasis added).

MIFPA defines an “Indian child” to mean: “an unmarried person who is under the age of 18 and is either of the following: (a) a member of an Indian tribe; or (b) eligible for membership in an Indian tribe as determined by that Indian tribe. MCL 712B.3(k). MIFPA’s definition is therefore slightly broader than ICWA’s, and does not require the child’s parent to be enrolled in a federally recognized tribe to be considered an Indian child entitled to receive the protections of the Acts. Each tribe determines eligibility and enrollment under their own constitutions and codes, and each tribe’s requirements vary.

A child adopted by a family whose parents are members of a particular tribe, regardless of the child’s heritage by birth, may be subject to ICWA if the child is a member of or eligible for enrollment in the adoptive parents’ tribe or any other tribe.

To determine whether a child is a member of a specific tribe, agencies must contact that tribe and provide as much information about the child as possible (e.g., the child’s name, the name of each parent, and the names of grandparents). If MDHHS caseworkers¹ are providing services to the child, they will have access to this information. If the parent is having difficulty identifying the tribe (there are various reasons for this, including the possibility that the parent was adopted), MDHHS should conduct a thorough investigation into where the family is from, if they have ever received Indian Health Services health care, gather information from other family members, and, under state law, notify the tribe in the county where the child is living. MCL 712B.9(3).

The Final Rule requires state courts to “ask each participant in an emergency or voluntary or involuntary child custody proceeding whether the participant knows or has reason to know the child is an Indian child.” 81 Fed Reg at 38869. That inquiry must be made at the commencement of the proceeding and on the record. *Id.* MCR 3.935(B)(5) and MCR 3.965(B)(2) require the court to inquire at the preliminary hearing whether the child or either parent is a member of any American Indian tribe or band. The court rule goes on to state that, “If the child is a member, or

¹The term “MDHHS caseworkers” also includes private agency caseworkers contracted through the department.

if a parent is a member and the child is eligible for membership in the tribe, the court must determine the identity of the child's tribe, notify the tribe or band, and, if the child was taken into protective custody pursuant to MCR 3.963(A) or the petition requests removal of the child, follow the procedures set forth in MCR 3.967."

If there is no other way to identify an Indian child's tribe, the court must order notice sent to the Bureau of Indian Affairs' regional office. For Michigan tribes, contact:

Director, Midwest Regional Office
Bureau of Indian Affairs
5600 American Boulevard West
Suite 500
Bloomington, MN 55437-1464
Phone: (612) 713-4400

When contacting the BIA, the court or agency will need as much family-tree information as possible. This includes the child's name and the names of the parents and grandparents.

If courts or caseworkers have other questions or need general assistance, the BIA's branch office in Michigan often can help. Although official notices must go to the BIA's multistate regional office in Minnesota, the BIA's Michigan agency can answer many questions. Its contact information is:

Michigan Agency
Bureau of Indian Affairs
2901.5, 1-75 Business Spur
Sault Ste. Marie, MI 49783
Phone: (906) 632-6809

For more details, see this guide's section titled: [*IDENTIFYING AN INDIAN CHILD OR INDIAN TRIBE; NOTIFICATION REQUIREMENTS*](#). A list of the designated tribal ICWA agents for notice is available at [*81 FED. REG. 10887 \(MARCH 16, 2016\)*](#). Please note this list is updated regularly.

II. MIFPA and ICWA Definitions of "Child Custody Proceeding" MCR 3.002(2)

25 USC 1903 states the Act applies to any "child custody proceeding" involving an Indian child. Both ICWA and MIFPA define child custody proceeding. ICWA states that a "child custody proceeding" shall mean and include:

- (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian

custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) “termination of parental rights” which shall mean any action resulting in the termination of the parent-child relationship;

(iii) “preadoptive placement” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) “adoptive placement” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

25 USC 1903(1).

MIFPA has the same definitions for termination, preadoptive placement, and adoptive placement. However, MIFPA defines “foster care placement” to be consistent with Michigan case law. Because the Michigan Court of Appeals has interpreted that definition to include guardianships, MIFPA defines “foster care placement” as:

Any action removing an Indian child from his or her parent or Indian custodian, and where the parent or Indian custodian cannot have the 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 part 2 of article V of the estates and protected individuals code, 1998 PA 386, [MCL 700.5201 TO 700.5219](#); or (C) A juvenile guardianship under chapter XIA.

MCL 712B.3.

Finally, under both laws, the statutory definition of a “child custody proceeding” does not include an award of custody to one of the parties in divorce proceedings. Thus, child custody and parenting time disputes between parents are not “child custody proceedings” and do not implicate MIFPA or ICWA.

A. Involuntary Proceedings

As noted above, the foster care definition of ICWA and MIFPA state that “foster care placement” includes “*any* action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution ... where the parent or Indian custodian cannot have the child returned upon demand.” This would include both emergency removals under 25 USC 1922 and other involuntary removal procedures authorized by Michigan law. In Michigan, that almost always will involve MDHHS, whose removal of a child from a parent is an involuntary proceeding *from the parent’s perspective*. A court may order MDHHS to conduct

an investigation for an involuntary guardianship, or full guardianship, but the agency will not remain involved in the case if the guardianship is ordered.

If the removal is involuntary (i.e., pursuant to an abuse and neglect petition), MIFPA and ICWA apply and all of the following requirements must be met under MCL 712B.9 and 712B.15(2):²

- The tribe must be notified, along with the parents and Indian custodian. MCR 3.905(C), 3.920(C), 3.921.
- “Active efforts” must be made to maintain the Indian family. MCR 3.002; MCL 712B.3(a).
- A “qualified expert witness” must testify to the risk of harm MCL 712B.15(2).
- The placement preferences in MIFPA must be honored unless the child’s tribe adopts a resolution that alters those preferences. MCL 712B.23(1).
- The tribe must be allowed to intervene if it so chooses. MCL 712B.7(6).
- The tribe may also petition to transfer the case to tribal court jurisdiction. MCL 712B.7(3).
- See MCR 3.967, Removal Hearing for an Indian Child

Involuntary Placement in Foster Care

Under MIFPA, an Indian child “may be removed from a parent or Indian custodian, placed into a foster care placement,”

only upon *clear and convincing evidence* that *active efforts* have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that the *active efforts were unsuccessful*, and 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 Indian child*. The active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. The evidence must include the testimony of at least 1 *qualified expert witness*, who has knowledge of the child rearing practices of the Indian child's tribe, 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 Indian child.³

The emphasized words have specific definitions and case law that applies. This includes the standard of evidence, the definition of active efforts, and the definition of qualified expert witness.

ICWA has the same standard, stating that “no foster care placement may be ordered in such proceeding in the absence of a determination, supported by *clear and convincing evidence*,

² “Active efforts” and “qualified expert witness” have special ICWA and MIFPA definitions. Those definitions and the other requirements listed in the text above are discussed in more detail throughout this guide.

³ MCL 712B.15(2) (emphasis added).

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.” 25 USC 1912(e).

To meet ICWA’s “clear and convincing evidence” threshold, the evidence must show the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the child. The evidence must show the causal relationship between the conditions and the damage that is likely to result. *See* Final Rule, 81 Fed Reg at 38873.

Generalized evidence that shows only the existence of community or family poverty, crowded or inadequate housing, substance abuse, single parenthood, custodian age, or nonconforming social behavior does not by itself constitute “clear and convincing evidence” of home conditions that will cause serious emotional or physical damage. The evidence for removal must focus on specific conditions and the likelihood that they will cause serious damage to the child. *Id.*

Michigan is considered a “dual burden” state, where the state must meet both the federal and state requirements to remove a child or terminate parental rights. *See In re England*, __ Mich App __; __ NW2d __, (Docket No. 327240, issued Jan. 28, 2016)(quoting *In re Payne*, 311 Mich App 49, 58; 874 NW2d 205, 210 (2015)).

Involuntary Termination of Parental Rights

25 USC 1903(1)(ii) and MIFPA 712B.3(b)(ii) define “termination of parental rights” as “any action resulting in the termination of the parent-child relationship.”

ICWA and MIFPA permit a parent may withdraw a *consent* to termination of parental rights for any reason at any time prior to the entry of a final order of adoption. 1913(c); MCL 712B.13(3). See “[VOLUNTARY PROCEEDINGS](#)” section.

To terminate the parental rights to an Indian child, MIFPA and ICWA require evidence ***beyond a reasonable doubt*** – including testimony from at least one “[QUALIFIED EXPERT WITNESS](#)” – that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Before seeking a termination of parental rights, the petitioner must have made the same types of “active efforts” mentioned above and discussed in detail in section IV below.

The court may not terminate parental rights simply because:

- 1) someone else could do a better job of raising the child; or
- 2) termination is in the child’s best interests; or
- 3) the parents or custodians are “unfit parents.”

MIFPA has the same requirements as ICWA, and also provides two categories of persons, in an order of preference, for qualified expert witnesses: (1) a member of the Indian child’s tribe, or witness approved by the Indian child’s tribe, who is recognized by the tribal community as knowledgeable in tribal customs and how the tribal customs pertain to family organization and child rearing practices; and (2) a person with knowledge, skill, experience, training, or education

and who can speak to the Indian child's tribe and its customs and how the tribal customs pertain to family organization and child rearing practices. MCL 712B.17.

The petitioner must prove that serious emotional or physical damage to the child is likely to result if the child stays with her parents or Indian custodian. *See also* Final Rule, 81 Fed Reg at 38873.

Notice of Involuntary Proceedings (MCR 3.920[C])

According to the Final Rule, 81 Fed Reg at 38871, notice of an involuntary proceeding must clearly state all of the following information and be sent to the Indian child's tribe, parent, and/or Indian custodian:

- 1) The name of the Indian child, the child's birthdate and birthplace;
- 2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;
- 3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;
- 4) the name of each Indian tribe(s) in which the child is a member or may be eligible for membership;
- 5) All names known, and current and former addresses of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases, birthdates, places of birth and death, tribal enrollment numbers, and/or other identifying information;
- 6) A copy of the petition, complaint, or other document by which the proceeding was initiated, and if a hearing has been scheduled, information on the date, time, and location of the hearing;
- 7) Statements setting out:
 - a. The name of the petitioner and the name and address of petitioner's attorney;
 - b. The absolute right of the biological parents, the Indian custodians, and the child's tribe to intervene in the proceedings;
 - c. The right of the any parent or Indian custodian of the child to intervene in the proceedings;
 - d. The Indian tribe's right to intervene at any time in a State court proceeding;
 - e. If the parent(s) or Indian custodian(s) is unable to afford counsel based on a determination of indigence by the court, parent(s) or Indian custodian has the right to court appointed counsel;
 - f. The right to be granted, upon request, up to 20 additional days to prepare for the proceedings due to circumstances of the particular case;
 - g. The right of the parent or Indian custodian or tribe to petition the court for transfer of the proceeding to tribal court;
 - h. The mailing addresses and telephone numbers of the court and information related to all parties to the proceeding and individuals notified under this section; and
 - i. The potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians;

- j. That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.

In a unanimous opinion that decided two cases, the Michigan Supreme Court clarified several issues related to notice in *In re C. I. Morris, Minor and In re J. L. Gordon, Minor*, 491 Mich 81, 82 (2012). The Court held that: A) “. . . sufficiently reliable information of virtually any criteria on which tribal membership might be based suffices to trigger the notice requirement.” B) “. . . a parent of an Indian child cannot waive the separate and independent ICWA rights of an Indian child’s tribe and . . . the trial court must maintain a documentary record including, at minimum, (1) the original or a copy of each actual notice personally served or sent via registered mail pursuant to 25 USC 1912(a) and (2) the original or a legible copy of the return receipt or other proof of service showing delivery of the notice.”⁴ C) “[T]he proper remedy for an ICWA-notice violation is to conditionally reverse the trial court and remand for resolution of the ICWA-notice issue.”⁵

An appendix to the Court’s opinion entitled “AN OVERVIEW OF THE 25 USC 1912(a) NOTICE PROCESS” provides step-by-step instructions to comply with ICWA’s notice requirements and is designed to help Michigan’s trial courts properly apply 25 USC 1912(a). The *Morris* opinion also requires record of the notices be filed with the court along with any responses from the tribes. MIFPA also requires that if a child may be an Indian child, but her tribe is not known, “the department shall, at a minimum, contact in writing the tribe or tribes located in the county where the child is located.” MCL 712B.9(3).

B. Delinquency Proceedings (Scattered throughout MCR 3.900 et seq.)

While ICWA further explains that a child custody proceeding does not include “a placement based upon an act which, if committed by an adult, would be a crime,” 25 USC 1903(1), MIFPA further defines this affirmatively, stating that a child custody proceeding falls under MIFPA when an “Indian child is charged with a status offense in violation of section 2a(2) to (4) or d of chapter XIIA.” MCL 712B.3(b)(v). The Final Rule states ICWA applies to “a proceeding involving status offenses if any part of those proceedings results in the need for out-of-home placement of the child, including a foster care, preadoptive or adoptive placement, or termination of parental rights.” Final Rule, 81 Fed Reg at 33868.

⁴ In a footnote, the Court highlighted part IV(C) of its opinion, noting that “a complete record should also include any additional correspondence between the Department of Human Services, the trial court, and the Indian tribe or other person or entity entitled to notice.” 491 Mich 89, n1.

⁵ The sole issue for decision in *In re Morris* was whether a “conditional affirmance” is an appropriate appellate remedy for an ICWA violation. In reaching its holding that a conditional reversal is the most appropriate remedy, the Court considered: “(1) deference to tribal interests, as expressed by ICWA, (2) the best interests of the children, both Indian and non-Indian, in establishing and maintaining permanency, (3) the need to encourage compliance with ICWA, especially in light of the potential effects of the 25 USC 1914 remedy when errors occur, and (4) the conservation of judicial resources.” 491 Mich 109. The Court determined that conditional reversal is more deferential to tribal interests while ensuring that those interests are protected by the trial courts.

Whether MIFPA and ICWA apply in a delinquency proceeding depends on two factors: (1) the type of offense or crime and (2) whether the placement was based upon an act that would be a crime if committed by an adult. If the Indian child is charged with a status offense, then ICWA and MIFPA applies. For all other juvenile offenses when placement was based on an act that would be a crime if committed by an adult, ICWA and MIFPA do not apply.

Important caveat: If the investigation of a delinquency case involving either a status or *non-status* offense leads to the removal of the child from the home due to the possibility of abuse or neglect, then MIFPA and ICWA *will apply*.

Status Offenses

MIFPA specifically states it applies to defined status offenses in Michigan law listed below.

MCL 712A.2(a)(2)-(4); (d) includes the following status offenses:

(a)(2): 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.

(a)(3): 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.

(a)(4): The juvenile willfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile's education needs, or repeatedly violates rules and regulations of the school or other learning program, and the court finds on the record that the juvenile, and 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

(d) 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.
- 4) Repeatedly associating with thieves, prostitutes, pimps, or procurers.

- 5) Willfully disobedient to the reasonable and lawful commands of his her parents, guardian, or other custodian and in danger of becoming morally depraved

If an Indian child is brought before a court on one of the status offenses listed above, MIFPA applies. Always give a child's tribe notice of the proceedings, even if the child is not removed from the home. This allows the tribe to intervene and assist with culturally consistent services. If the child is to be removed from the home, MIFPA requires both "active efforts" and testimony by a "qualified expert witness" before a court may follow MIFPA placement preferences discussed later in this section.

In rare cases, for example, when a minor runs away and the police later detain him for a status offense, the case may qualify temporarily for an "emergency removal" placement. But MIFPA and ICWA still apply, which means that the placement based on the emergency situation must end as soon as the emergency itself does. See the [EMERGENCY REMOVAL & PROTECTIVE CUSTODY](#) section below.

Another atypical status offense situation may arise when the status offense charge causes a court to find an Indian child in contempt of court for a probation violation. ICWA would not apply to the contempt order and resulting out-of-home placement if the placement is based on an act that would be a crime if committed by an adult (i.e., not a status offense), and not the inappropriateness of the child's home.

Non-Status Offenses

If an Indian child is returned home after committing an act to which MIFPA and ICWA do *not* apply, the MDHHS Child Protective Services division (CPS) may decide to investigate or file a petition if a lack of proper supervision may have contributed to the child's delinquent behavior. CPS may then file a new petition to provide in-home services or to remove the child from the home and place him in a foster care setting. Note that MIFPA and ICWA *would* apply to the proceedings under the new CPS petition even though the Acts did *not* apply to the original juvenile proceeding that caused CPS to become involved.

C. Voluntary Proceedings

MIFPA and ICWA apply to voluntary proceedings to ensure due process to birth parents. These provisions include parental consent to foster care, termination of parental rights, adoptive placement, and guardianships. See 25 USC 1913; Final Rule at 38868. If an Indian child is involved in one of these proceedings, MIFPA or ICWA applies and, the following procedural issues must be addressed in all of them:

- **Inquiry.** Under the Final Rule, the court must require participants in a voluntary proceeding to state on the record whether the child is an Indian child. If the participants do not know, the tribe may need to be contacted to verify the child's membership. Final Rule, 81 Fed Reg at 38873.

- Notice. Unlike ICWA, MIFPA does not distinguish between involuntary or voluntary proceedings for notice. Instead, notice is required in *any* child custody proceeding. MCL 712B.9(1). Under both laws, Indian custodians and tribes have the right to intervene at any time during the proceedings.
- Consent. A valid consent document must be executed in the presence of the court (see below for details and statutory authority).
- Placement. The placement preferences in MIFPA and ICWA must be followed unless amended by the tribe. (See [PLACEMENT OF INDIAN CHILDREN](#) Section below.)

Some proceedings may be voluntary as to one parent and involuntary as to the other.⁶ As noted earlier, 25 USC 1903(1)(i) defines the term “foster care placement” to include

...*any* action removing an Indian child from its parent or Indian custodian for temporary placement in ... the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated

MIFPA mirrors ICWA, except MIFPA requires the consent of **both parents for a guardianship**. If only one parent agrees, the guardianship should be treated as involuntary. MCL 712B.13.

In voluntary placement cases, 25 USC 1915(c) gives certain rights to tribes and extended family members. For example, ICWA and MIFPA defer to specific tribal child placement priorities that differ from those established in either act. Because of this provision allowing a tribal resolution to alter ICWA placement preferences, it is a best practice to notify the tribe of the proceeding. In addition, MIFPA makes no distinction on notice between voluntary and involuntary proceedings. Without such notice, the tribe would not have the opportunity afforded by 25 USC 1915(c) or MCL 712B.23(6) to invoke their own placement preferences.

Sometimes parents request anonymity. Under ICWA, a court must “give weight” to a parent’s desire for anonymity when applying placement preferences. 25 USC 1915(c). MIFPA has no provision for a parent’s request for anonymity for placement preferences., but does for recordkeeping purposes. See MCL 712B.35(2). In addition, all parties must keep documents confidential when the parent requests anonymity. Final Rule, 81 Fed Reg at 38873.

Best Practices Tip: For those voluntary proceedings in which a biological parent has requested anonymity, the court needs to weigh that request with the interest of the tribe in the placement of the child. However, the Michigan Court of Appeals in *In re KMN*, 309 Mich App 274, 291; 870 NW2d 75, 84 (2015), held that the mother’s preference for a non-MIFPA compliant placement in a direct placement adoption was not considered “good cause” to deviate from the placement preferences. Mother did not request anonymity. *See also Matter of Baby Girl Doe*, 262 Mont 380; 865 P2d 1090 (1993). The new Final Rule states that courts must “give weight” to a consenting parent’s request for anonymity. 81 Fed Reg at 38874. The Final Rule also allows for

⁶ An example would be when two parents disagree about the appropriate placement for a child and only one parent consents to a particular placement. State courts must ensure that the MIFPA and ICWA requirements for an involuntary placement are followed with respect to the non-consenting parent.

a parent's preference after attesting they have reviewed placements compliant with the law to be good cause to deviate. Id. Given this current conflict in authorities, contacting and working with the tribe in voluntary proceedings is the best practice to ensure parents' due process rights are protected, the provisions of MIFPA and ICWA are followed, and the child's permanent placement is not disrupted.

Consent to Guardianship, Foster Care Placement or Termination of Parental Rights

Pursuant to 25 USC 1913(a), courts may recognize a parent's consent to a foster care placement or termination of parental rights as valid only if:

- 1) The consent is in writing.
- 2) The consent is executed in writing and recorded before a judge of a court with competent jurisdiction.
- 3) The presiding judge certifies in writing that the terms and consequences of the consent were fully explained (with assistance from a translator if necessary) and were fully understood by the parent or Indian custodian. The court should place a copy of this certification in the court file.
- 4) The consent was signed *more* than 10 days after the birth of the Indian child.

Under MIFPA, for the consent of parents consenting to a guardianship, termination of parental rights, or an adoptive placement, to be valid it:

must be executed on a form approved by the state court administrative office, in writing, 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 into a language that the parent or Indian custodian understood. Any consent given before, or within 10 days after, birth of the Indian child is not valid.

MCL 712B.13(1)(a)

Best Practices Tip: If a parent is voluntarily consenting to either foster care or termination of parental rights as a result of a state petition against them, follow the procedures for an involuntary foster care placement or termination of parental rights, including qualified witness testimony and the burden of proof.

Voluntary Consent Document

Under MIFPA, for a parent voluntarily consenting to a direct placement adoption, including termination of parental rights for that purpose, or a petition for guardianship, the consent must contain the following:

- (a) The Indian child's name and date of birth.
- (b) The name of the Indian child's tribe and any identifying number or other indication of the child's membership in the tribe, if any.
- (c) The name and address of the consenting parent or Indian custodian.
- (d) A sworn statement from the translator, if any, attesting to the accuracy of the translation.
- (e) The signature of the consenting parent, parents, or Indian custodian recorded before the judge, verifying an oath of understanding of the significance of the voluntary placement and the parent's right to file a written demand to terminate the voluntary placement or consent at any time.
- (f) For consent for voluntary placement of the Indian child in foster care, the name and address of the person or entity who will arrange the foster care placement as well as the name and address of the prospective foster care parents if known at the time.
- (g) For consent to termination of parental rights or adoption of an Indian child, in addition to the information in subdivisions (a) to (f), the name and address of the person or entity that will arrange the preadoptive or adoptive placement.

MCL 712B.13(2).

In addition, in a “direct placement” pursuant to MCL 722.10(o) the consent must

be accompanied by a verified statement signed by the parent or guardian that contains all of the following:

- (a) That the parent or guardian has received a list of community and federal resource supports and a copy of the written document described in section 6(1)(c) of the foster care and adoption services act, 1994 PA 204, MCL 722.956.
- (b) As required by sections 29 and 44 of chapter X, that the parent or guardian has received counseling related to the adoption of his or her child or waives the counseling with the signing of the verified statement.
- (c) That the parent or guardian has not received or been promised any money or anything of value for the consent to adoption of the child, except for lawful payments that are itemized on a schedule filed with the consent.
- (d) That the validity and finality of the consent are not affected by any collateral or separate agreement between the parent or guardian and the adoptive parent.
- (e) That the parent or guardian understands that it serves the welfare of the child for the parent to keep the child placing agency, court, or department informed of any health problems that the parent develops that could affect the child.
- (f) That the parent or guardian understands that it serves the welfare of the child for the parent or guardian to keep his or her address current with the child placing

agency, court, or department in order to permit a response to any inquiry concerning medical or social history from an adoptive parent of a minor adoptee or from an adoptee who is 18 years or older.

MCL 712B.13(6).

In addition to all of the requirements above, under federal law, the consent must also contain the following:

If there are any conditions to the consent, the written consent must clearly set out the conditions.

A consent to foster care must also contain the child's name and birthdate, the child's Tribe, the enrollment number of the parent and the child's, the name address and other identifying information of the consenting parent, the name and address of the person or entity arranging the placement, and the name and address of the foster parents.

Final Rule, 81 Fed Reg at 38873-4.

II. Indian Tribe

MIFPA defines "Indian child's tribe" to mean "the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than 1 tribe, the Indian child's tribe is the tribe with which the Indian child has the most significant contacts." MCL 712B.3(l). *See also* Final Rule, 81 Fed Reg at 38870.

25 USC 1903(5) defines "Indian child's tribe" to mean, (a) "the Indian tribe in which an Indian child is a member or eligible for membership" or (b) in the "case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts."

For more details, see this guide's section titled: [*IDENTIFYING AN INDIAN CHILD OR INDIAN TRIBE; NOTIFICATION REQUIREMENTS*](#). A list of the designated tribal ICWA agents for notice is available at [*81 FED. REG. 10887 \(MARCH 16, 2016\)*](#).

Both ICWA and MIFPA guarantee an Indian child's tribe the right to intervene in child custody proceedings in state court. 25 USC 1903(8) and MIFPA 712B.3(o) define an "Indian tribe" as "...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 [of the Interior] because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43."

Michigan has 12 federally recognized tribes. They are:

- 1) Bay Mills Indian Community
- 2) Grand Traverse Band of Ottawa and Chippewa Indians

- 3) Hannahville-Potawatomi Indian Community
- 4) Keweenaw Bay Indian Community
- 5) Lac Vieux Desert Band of Lake Superior Chippewa Indians
- 6) Little River Band of Ottawa Indians
- 7) Little Traverse Bay Bands of Odawa Indians
- 8) Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
- 9) Nottawaseppi Huron Band of Potawatomi
- 10) Pokagon Band of Potawatomi Indians
- 11) Saginaw Chippewa Indian Tribe
- 12) Sault Ste. Marie Tribe of Chippewa Indians

For any child involved in Michigan's child welfare system who may be a member or eligible for membership in any tribe, including those tribes not located in Michigan, petitioners, Michigan agencies and courts must send notices to the tribe or tribes to which the Indian child belongs or may belong. The Michigan designated agents are listed in [APPENDIX D](#). As stated above, the list of the all designated tribal ICWA agents for notice is available at [81 FED. REG. 10887 \(MARCH 16, 2016\)](#).

In addition, many parents state they may be members of the Cherokee Nation. This is likely because the Cherokee Nation is the largest tribe (by population) in the United States. There are only three Cherokee tribes that must be noticed: Cherokee Nation of Oklahoma, Eastern Band of Cherokee Indians, and the United Keetoowah Band of Cherokee Indians. All of their designated agents for ICWA service are listed in the [FEDERAL REGISTER](#).

Some Indian children are both Canadian citizens and members of U.S. federally recognized tribes. ICWA and MIFPA apply to those children because of their membership in tribes recognized by our federal government. ICWA and MIFPA do not apply to members of non-federally recognized tribes, Canadian tribes, or state historic tribes.

Best Practices Tip: Even though ICWA and MIFPA do not apply to the last-mentioned groups, courts may choose to send notice of a proceeding to a non-federally-recognized tribe, Canadian tribe, or a state historic tribe. Those tribes may offer culturally consistent services that can help the child and family. The Canadian government website on Indigenous and Northern Affairs is here: [HTTP://WWW.AINC-INAC.GC.CA/INDEX-ENG.ASP](http://www.ainc-inac.gc.ca/index-eng.asp). However, even if notice is sent and one of those tribes responds, it will not have the various statutory rights guaranteed to federally recognized tribes by ICWA and MIFPA.

III. Tribal Jurisdiction

Tribal governments have inherent jurisdiction over their lands and people. MIFPA and ICWA require state courts to recognize that jurisdiction.⁷ MIFPA states that an Indian tribe “has

⁷ In some states (not Michigan), jurisdiction is vested in the state by a federal law known as Public Law 280 [see 18 USC 1162(a) and 28 USC 1360(a)]. In states that enacted Public Law 280, the state courts have concurrent jurisdiction over ICWA cases that arise on tribal land, unless the tribe reassumes jurisdiction under 25 USC 1918.

exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe. 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 his or her residence or domicile.” MCL 712B.7(1).

25 USC 1911(a) states that an Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who

- Resides or is domiciled within the tribe’s reservation,⁸ or
- Is a ward of the tribal court, regardless of the child’s residence. ICWA does not define “ward,” but courts around the country have defined this term to include occasions when a tribe exercises authority over a child by:
 - Tribal court order (for custody or placement) or
 - Tribal resolution, where a tribe does not conduct formal tribal court proceedings. See *In re MRD.*, 787 P2d 1219 (Mont, 1990); *In re DLL*, 291 NW2d 278 (SD, 1980); or *In re JM*, 718 P2d 150 (Alaska, 1986).

Best Practices Tip: If the tribal court order or resolution does not include the word “ward” in its order or decree, state courts should try to discern the intent of the document to determine whether the Indian child is a ward of the tribe. If the tribe intends to maintain some type of jurisdiction or oversight of the child, then the court should treat the child as a ward of the tribe for purposes of jurisdiction. The state court may also call the tribal court to help determine whether the child a ward of the tribal court.

Tribal Courts: The following link will take you to a page on the STATE COURT ADMINISTRATIVE OFFICE website that lists the contact information for all Michigan tribal courts. [HTTP://COURTS.MI.GOV/COURTS/TRIBALCOURTS/PAGES/DEFAULT.ASPX](http://COURTS.MI.GOV/COURTS/TRIBALCOURTS/PAGES/DEFAULT.ASPX).

The state court must determine whether the Indian child resides or is domiciled on a reservation. Final Rule, 81 Fed Reg at 38870. If so, the state court lacks jurisdiction over the child and must dismiss its case. The only exceptions are emergency removals; there, ICWA permits the state court to authorize the filing of a petition before transferring the case to the appropriate tribal court. See this guide’s [EMERGENCY REMOVAL](#) section.

For Indian children who reside off their tribe’s reservation, state and federal law requires state courts to meet several requirements discussed in this guide’s section titled: [IDENTIFYING AN INDIAN CHILD OR INDIAN TRIBE; NOTICE REQUIREMENTS](#). This is because the tribe and the state have concurrent, but presumptively tribal, jurisdiction over the case. If the state court determines that the child *previously* resided or was domiciled on a reservation, the court must contact the tribal court to ascertain if the child is a ward of that tribal court. If an Indian child is a ward of a tribal

Because Michigan is *not* a Public Law 280 state, Michigan tribes have exclusive jurisdiction over cases arising on tribal land.

⁸ In *Mississippi Band of Choctaw Indians v Holyfield*, 490 US 30 (1989), the Court held that a child born in wedlock takes the parents’ domicile, and a child born out of wedlock takes the child’s mother’s domicile. Also note that the status of tribal land in Michigan varies by tribe, and it is always best to talk to the tribe about whether the child lives on tribal land.

court, the Indian tribe retains exclusive jurisdiction regardless of the Indian child's current residence or domicile. Because of the concurrent, but presumptively tribal, jurisdiction, the tribe or parent may request the case be transferred to tribal court. This is discussed in more detail in this guide's section titled: [TRANSFER TO TRIBAL COURT](#).

IV. Active Efforts

MIFPA and ICWA require that any party seeking an involuntary foster care placement of, or involuntary termination of parental rights to, an Indian child must show the court that "active efforts" have been made "to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." 25 USC 1912(d); MCL 712B.15(2). The active efforts must be made prior to the child's removal from home. Therefore, courts need to address the issue thoroughly at the first hearing.

However, ICWA does not define "active efforts." In *Empson-Laviolette v Crago*, 280 Mich App 620; 760 NW2d 793 (2008), the Michigan Court of Appeals acknowledged that "[i]n adopting ICWA, Congress sought to establish 'minimum Federal standards for the removal of Indian children from their families' in order to protect the best interests of Indian children and to promote the stability and security of Indian tribes and their families," citing 25 USC 1902; *In re Elliott*, 218 Mich App 196, 201.

Because of this, MIFPA does define "active efforts", and has one of the most comprehensive active efforts definitions in the country:

Active efforts means actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the child with the Indian family. Active efforts require more than a referral to a service without actively engaging the Indian child and family. Active efforts include reasonable efforts as required by title IV-E of the social security act,⁹ and also include doing or addressing all of the following:

- (i) Engaging the Indian child, child's parents, tribe, extended family members, and individual Indian caregivers through the utilization of culturally appropriate services and in collaboration with the parent or child's Indian tribes and Indian social services agencies.
- (ii) Identifying appropriate services and helping the parents to overcome barriers to compliance with those services.
- (iii) Conducting or causing to be conducted a diligent search for extended family members for placement.
- (iv) Requesting representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards and child rearing practice within the tribal community to evaluate the circumstances of

⁹ Because MIFPA incorporates *reasonable efforts* into the legal definition of *active efforts*, state courts do not have to make both reasonable and active efforts judicial findings to be Title IV-E compliant. See page 24 for further information on Title IV-E funding.

the Indian child's family and to assist in developing a case plan that uses the resources of the Indian tribe and Indian community, including traditional and customary support, actions, and services, to address those circumstances.

- (v) Completing a comprehensive assessment of the situation of the Indian child's family, including a determination of the likelihood of protecting the Indian child's health, safety, and welfare effectively in the Indian child's home.
- (vi) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and actively soliciting the tribe's advice throughout the proceeding.
- (vii) Notifying and consulting with extended family members of the Indian child, including extended family members who were identified by the Indian child's tribe or parents, to identify and to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.
- (viii) Making arrangements to provide natural and family interaction in the most natural setting that can ensure the Indian child's safety, as appropriate to the goals of the Indian child's permanency plan, including, when requested by the tribe, arrangements for transportation and other assistance to enable family members to participate in that interaction.
- (ix) Offering and employing all available family preservation strategies and requesting the involvement of the Indian child's tribe to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child's tribe.
- (x) Identifying community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child's family with special needs, and providing information about those resources to the Indian child's family, and actively assisting the Indian child's family or offering active assistance in accessing those resources.
- (xi) Monitoring client progress and client participation in services.
- (xii) Providing a consideration of alternative ways of addressing the needs of the Indian child's family, if services do not exist or if existing services are not available to the family.

“Active efforts” is a requirement of both state and federal law and differs from the “reasonable efforts” requirements for non-Indian children. Review the [MDHHS POLICY](#) on this topic to see what MDHHS instructs caseworkers to do to meet this requirement. **“Active efforts” are required for each Indian child and family. This requirement follows the child, and it applies to the child’s entire extended family regardless of the family members’ Indian status.** This heightened level of required effort includes ensuring that adequate parenting time is ordered and appropriately facilitated. One hour per week of supervised visitation in a local MDHHS office, for example, will not meet this heightened standard. Active efforts include efforts to remove barriers preventing the parent(s) compliance with the services required in the case services plan.

“Active efforts” are required in all involuntary proceedings. Some proceedings may be voluntary as to one parent and involuntary as to the other (e.g., adoptions where the custodial parent consents but the noncustodial parent objects). The non-consenting parent in that case would receive all the protections under MIFPA and ICWA, including active efforts. See the [VOLUNTARY AND INVOLUNTARY PROCEEDINGS](#) section above.

The standard of proof for demonstrating active efforts were provided is clear and convincing evidence under both MIFPA and ICWA. *In re England*, __ Mich App __; __NW2d __, (Docket No. 327240, issued Jan. 28, 2016) ICWA does not require the MDHHS or the tribe to provide services each time a new termination proceeding is commenced against a parent when past efforts failed and it does not appear that providing the additional services will prove different. *In re JL*, 483 Mich 300; 770 NW2d 853 (2009). However, the Michigan Supreme Court went on to hold in *In re JL* that,

... [T]he ICWA requires the DHS to undertake a thorough, contemporaneous assessment of the services provided to the parent in the past and the parent’s response to those services before seeking to terminate parental rights without having offered additional services.” *Id.* at 304.

The Court in *In re JL* stated that ICWA does not require “current” active efforts. This does not mean that those efforts provided long ago are enough to meet the statutory threshold. Trial courts are to “carefully assess the timing of the services provided to the parent. Services provided too long ago to be relevant to a person’s current circumstances do not establish by clear and convincing evidence that active efforts have been made...” The Court concluded by stating that the timing and nature of the services provided must be evaluated against the parent’s current situation.

The Court in *In re JL* also “decline[d] to hold that active efforts must always have been provided in relation to the child who is the subject of the current termination proceeding.” *Id.* at 325. Rather, the Court noted “the efforts made and services provided in connection with the parent’s other children are relevant to the parent’s current situation and abilities so that they permit a current assessment of parental fitness as it pertains to the child who is the subject of the current proceedings.” *Id.* at 325.

However, the Final Rule also defines active efforts as “affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.” Final Rule, 81 Fed Reg at 38865.

In agreeing with the Michigan Court of Appeals decision of *In re Roe*, 281 Mich App 88; 764 NW2d 789 (2003), the Michigan Supreme Court held in *In re JL* that “active efforts” require affirmative rather than passive efforts, and that more effort is required under the active efforts standard than is required under Michigan’s reasonable efforts standard.

Courts should evaluate the circumstances behind any petition and determine if “active efforts” might preserve the Indian family or the child’s connection to a tribe. Nothing prohibits a court from complying with the spirit of MIFPA and ICWA.

Best Practices Tip: Because the Court in *In re JL* specifically declined to adopt a “futility test” to determine whether more active efforts are required to terminate parental rights under a newly filed petition, courts should evaluate the following:

1. What previous active efforts were provided.
2. How long ago those efforts were provided.
3. What circumstances or situations those efforts were meant to address.
4. How the parent(s) responded to those efforts.
5. Whether additional efforts would assist the parents in eradicating any barriers to reunification.
6. Whether the department engaged the tribe in the previous efforts and if so, whether the tribe believes continuing efforts will be effective.

Evidence of these issues must be addressed and preserved on the record.

Why Does the State Legislature and Congress Require “Active Efforts”

When MIFPA and ICWA Applies?

Each federally recognized tribe in Michigan has a political, government-to-government relationship with the United States government. As a result of that relationship, the federal government has a trust responsibility to those tribes, grounded in the treaties that led to the creation of the state of Michigan.

As Congress stated in ICWA’s congressional findings, there is no resource more vital to the continued existence and integrity of Indian tribes than their children. The United States has a direct interest, as trustee, in protecting Indian children who are members of or eligible for membership in Indian tribes. Michigan, through ICWA and other federal laws, also has a direct responsibility in protecting not only all children who are citizens of the state, but also an additional responsibility to Indian children in this state, which gives it the authority to pass MIFPA.

The historical trauma associated with the forced removal of tribes from their native lands and with the removal of children from their families has impacted all Indian communities. One of the reasons Congress adopted a more stringent level of required assistance before removing an Indian child from her home was to protect an Indian child’s human right to her language, community, and culture. The devastating loss of that culture was directly related to the mass removal of Indian children. Today tribes are reviving and reintegrating their cultures and languages in their communities, often through the education of their children.

Given their status as sovereign governments, tribes intervene in child custody proceedings to protect and to act in the best interest of their own citizen-children.

Best Practices Tip: If courts have questions or concerns about the adequacy of the efforts made, *courts may call the designated ICWA agent for the tribe and encourage MDHHS caseworkers to do the same.* The tribe can help the caseworkers with the investigation and suggest culturally consistent services. These services combined with the efforts of the worker can assist the court in making the necessary active efforts finding. See the contact information for all federally recognized tribes in Michigan plus service area maps for several of the tribes in [APPENDIX D](#). Also, see [APPENDIX F](#) for recommended questions a court might ask MDHHS caseworkers to ensure that active efforts are made, and assist the court in making the necessary active efforts finding.

V. Qualified Expert Witness

Both MIFPA and ICWA require that a court may not order an (involuntary) foster care placement or terminate a parent's rights "in the absence of a determination, supported by clear and convincing evidence, including testimony of *qualified expert witnesses*,¹⁰ 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." 25 USC 1912(e), (f); MCL 712B.15(2) and (4). In addition, a court may not terminate parental rights without the same finding, but the burden of proof is beyond a reasonable doubt. Twice the Michigan Court of Appeals has held that the **state must** provide a qualified expert witness to testify to this standard in order to place an Indian child in foster care, *In re McCarrick/Lamoreaux*, 307 Mich. App. 436, 465-7 (2014), or to terminate parental rights, *In re Payne/Pumphrey/Fortson*, 311 Mich. App. 49, 62 (2015). The burden to obtain qualified expert witness testimony is that of the state; however, the state may consult with the child's tribe when identifying a person recognized in the tribal community as knowledgeable in the child-rearing practices of the child's tribe.

MIFPA provides two categories of persons, in an order of preference, who can testify as qualified expert witnesses: (1) A member of the Indian child's tribe, or witness approved by the Indian child's tribe, who is recognized by the tribal community as knowledgeable in tribal customs and how the tribal customs pertain to family organization and child rearing practices (2) A person with knowledge, skill, experience, training, or education and who can speak to the Indian child's tribe and its customs and how the tribal customs pertain to family organization and child rearing practices. MCL 712B.17(1). The child's social worker may not be considered a qualified expert witness. Final Rule, 81 Fed Reg at 38873.

Michigan Rules of Evidence (MRE) 702 requires Michigan judges to determine whether someone is "qualified as an expert" which has led to some confusion about exactly who may testify as a "qualified expert witness" for purposes of MIFPA and ICWA. The second preference of a MIFPA expert is a person who possesses more than knowledge earned from formal education; it is someone who, based on educational background and prior experience, can

¹⁰ ICWA does not require any particular number of expert witnesses. Therefore, courts have interpreted it to mean that only one expert is necessary. *In re Elliott*, 218 Mich App 196, 207 (1996); *In re Kreft*, 148 Mich App 682, 690 (1986).

provide more reliable judgments about the Indian child's tribe's culture than someone who is not an expert.

The qualified expert witness must address the specific issue of whether continued parental custody is likely to result in serious physical injury or emotional damage. If the expert has knowledge about the tribe's culture and child-rearing practices, this will help the court extrapolate from proven behaviors to the actual probability of physical or emotional injury. While providing the qualified expert witness is the burden of the party removing the child, the best resource for petitioners and state courts seeking to identify a qualified expert witness for purposes of MIFPA and ICWA is through contact with the Indian child's tribe itself.

A tribe may already have identified specific criteria for qualified expert witnesses in MIFPA and ICWA cases involving members of that tribe. State courts should consider qualifying a witness as an expert under MIFPA if the individual meets those tribal criteria and the MIFPA criteria. The tribe may assist the petitioner located a qualified expert witness. Final Rule, 81 Fed Reg at 38873.

VI. Funding for Cases Involving Indian Children

If an Indian child's case remains in a state court, or if a court has made MDHHS responsible for the child's care and supervision, then the money to administer the case and pay for the Indian child's care will come from the same federal, state, and local sources that provide funding for other children's cases. Children who are not Title IV-E eligible may qualify for placement and services paid for by a county or tribal Child Care Fund (CCF). If a tribal court has jurisdiction and that tribe provides services, then the tribal CCF¹¹ will fund those services -- subject to funding availability.

Title IV-E of the Social Security Act

Historically, Indian tribes have not had *direct* access to federal Title IV-E funds. However, the Fostering Connections to Success and Increasing Adoptions Act of 2008, PL 110-351, which was enacted and given immediate effect on October 7, 2008, allows tribes to either access Title IV-E funds directly or to continue operating under their current state agreements. That section of the Act has been codified as 42 USC 679, an entirely new section within Title IV-E. For more information on this new Act and its effects on Title IV-E funding for tribes, see this [INFORMATIONAL MEMORANDUM](#) on the Children's Bureau website.

As of 2016, at least one tribe in Michigan is accessing direct [TRIBAL IV-E FUNDING](#).¹²

¹¹ Some tribal CCFs are administered through intertribal agreements.

¹² Five other tribes have tribal-state agreements for Title IV-E Funding.

IMPORTANT NOTE REGARDING REQUIRED FINDINGS AND INDIAN CHILDREN

Prior to the 2012 passage of MIFPA, both judicial findings of active efforts and reasonable efforts to prevent removal from the home were required to be made by state courts to preserve Title IV-E funding for eligible Indian children. The U.S. Department of Health & Human Services Children's Bureau has indicated, after consultation with MDHHS, that a dual judicial finding is no longer required because MIFPA incorporates the definition of reasonable efforts into the higher burden of active efforts set by ICWA. This practice was further approved by the federal government during Michigan's 2016 Federal Title IV-E Onsite Review where an Indian child welfare case was reviewed and determined compliant. The state court has 60 days from the date of removal to make the required active efforts finding for IV-E funding eligibility.

VII. Interstate Compact for Placement of Children (ICPC)

The [ICPC](#) is a uniform state law that specifies how to handle a child's out-of-home placement to another state, and how the child will receive services in that other state. In addition to traditional foster care placements, the ICPC also applies to out-of-state placements with relatives or institutions. The ICPC was enacted as a Michigan law, which means all of this state's courts and agencies must follow it. Its rules apply any time a Michigan court sends a child to another state or receives a child from another state.

Best Practice Tip:

MIFPA now requires notice to a tribe in voluntary proceedings. MCL 712B.9(1). If Michigan is receiving a child, it is best practice to ask the sending state if they have provided notice, and if not, to consider providing the notice pursuant to MIFPA.

The ICPC applies to Indian children if the child is staying under the jurisdiction of either the receiving state or the sending. However, the ICPC does not apply to children under tribal jurisdiction.

Identifying an Indian Child or Indian Tribe; Notification Requirements

To ensure compliance with ICWA and MIFPA, state courts must determine: (1) whether the child appearing before the court is an "Indian child" (2) if so, to which tribe the child belongs and (3) if the child is eligible for membership in multiple tribes, which tribe ICWA designates as "the Indian child's tribe." According to the Michigan Supreme Court, "sufficiently reliable information of virtually any criteria on which tribal membership might be based suffices to trigger the notice requirement" of ICWA. *In re Morris*, 491 Mich 81, 88 (2012). Therefore, determining if the child is an Indian child and subject to the provisions of MIFPA and ICWA is of vital importance for the court.

I. Is the Child an “Indian Child” for Purposes of ICWA or MIFPA?

25 USC 1903(4) defines an “Indian child” as someone who is (1) unmarried and under the age of 18, and *either* (a) a member of an Indian tribe, *or* (b) the biological child of a member of an Indian tribe **and** eligible for membership in an Indian tribe.

MCL 712B.3 defines an “Indian child” as someone who is (1) unmarried and under the age of 18, and (2) eligible for membership in an Indian tribe as determined by that Indian tribe.¹³ MIFPA’s definition is slightly broader, and includes children who are eligible to be members even if their parents are not members.

The best way to identify an “Indian child” and determine the tribal affiliation is to contact the tribe and inquire. *The tribe’s determination of membership or eligibility for membership is conclusive.* [*SANTA CLARA PUEBLO V. MARTINEZ*, 436 US 49 \(1978\)](#)

Ask Every Participant in a Proceeding about a Child’s Status as an Indian Child

Federal regulations now requires the court to ask

each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

Final Rule 81 Fed Reg at 38869.

In addition, MCR 3.935(B)(5) and MCR 3.965(B)(2) requires courts to “inquire if the child or either parent is a member of any American Indian tribe.” If the court knows or has reason to know the child is an Indian child, the court “must determine the identity of the child’s tribe.” In addition, the court must comply with MCR 3.905 before proceeding with the hearing, which governs a tribe’s right to jurisdiction, notice, transfer, and intervention in Indian child custody proceedings.

If a court has assigned a MDHHS caseworker to the case, that caseworker should have access to this information. Caseworkers must determine at the outset whether a child is an “Indian child” for purposes of ICWA. MDHHS [POLICY](#) instructs caseworkers to work with the parents, Indian custodians, tribes, the Bureau of Indian Affairs Midwest Regional Office, the Bureau of Indian Affairs, and all tribes located in the county of residence or CPS complaint to meet this requirement. Courts should verify the specific steps taken by the MDHHS caseworker to

¹³ The court in *In re Fried*, 266 Mich App 535 (2005), held that ICWA does not apply if the Indian child’s tribe is not federally recognized.

determine the child's American Indian status. This will significantly reduce the risk of discovering the child's Indian heritage at an advanced stage in the proceedings, thereby causing significant delays as well as unnecessary use of court and agency resources.

The court should also ask the parents at the first court hearing, to ensure that MDHHS has done the initial inquiry and investigation, as to whether the child is an Indian child for the purposes of MIFPA and ICWA.

If No MDHHS Caseworker has been Assigned to the Case

Not all state court child custody proceedings will involve MDHHS caseworkers. For example, a juvenile delinquency petition or a petition filed for a limited or full guardianship will not automatically cause MDHHS to become involved. See MCR 5.404(A).

In those cases, the petitioning party must designate the child as an Indian child.¹⁴ The petitioner shall document all efforts made to determine a child's membership or eligibility for membership in an Indian tribe and shall provide them, upon request, to the court, Indian tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, and Indian custodian. MCR 5.404(A).

If in doubt, a court may appoint a lawyer guardian ad litem for the child to help investigate the child's Indian heritage or order MDHHS or a court employee to investigate the child's tribal affiliation after a temporary guardianship is ordered. See the [GUARDIANSHIP](#) section below for more details.

II. What is the "Indian Child's Tribe" for Purposes of ICWA?

25 USC 1903(5) and MCL 712B.3(l) define an "Indian child's tribe" as the tribe (or tribes) the child is a member of or eligible to join. If the child is eligible for membership in more than one tribe, then both ICWA and MIFPA consider the Indian child's tribe to be the one with which the child has the more significant contact.

ICWA applies to Indian children of all federally recognized tribes in the United States, regardless of where the child is located. MIFPA applies to Indian children of all federally recognized tribes if those *children* are in Michigan. Whether the tribe is located in Michigan is irrelevant to the application of the statute. The federal Bureau of Indian Affairs recognizes 567 American Indian and Alaska Native tribes.¹⁵ Twelve of those federally recognized tribes are located in Michigan:

1) Bay Mills Indian Community

¹⁴ Guardianship petitioners can designate a child as an "Indian child" by checking Item 3 on [SCAO FORM 651](#) (Petition for Appointment of Guardian of Minor) or by checking the second box on Item 4 on the [SCAO FORM 650](#) (Petition for Appointment of Limited Guardian of Minor).

¹⁵ Source: U.S. [BUREAU OF INDIAN AFFAIRS](#).

- 2) Grand Traverse Band of Ottawa and Chippewa Indians
- 3) Hannahville Indian Community
- 4) Keweenaw Bay Indian Community
- 5) Lac Vieux Desert Band of Lake Superior Chippewa Indians
- 6) Little River Band of Ottawa Indians
- 7) Little Traverse Bay Bands of Odawa Indians
- 8) Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
- 9) Nottawaseppi Huron Band of Potawatomi
- 10) Pokagon Band of Potawatomi Indians
- 11) Saginaw Chippewa Indian Tribe
- 12) Sault Ste. Marie Tribe of Chippewa Indians

If a child is already *enrolled or otherwise considered a member* by one tribe, that tribe is the “Indian child’s tribe” for purposes of ICWA and MIFPA even if the child is *eligible* for membership in another tribe. If a child first becomes a member of a tribe while the case is pending, that tribe immediately becomes the “Indian child’s tribe” with respect to all subsequent proceedings. If the child becomes a member of a tribe after the one that the court already has determined to be the Indian child’s tribe, the previous court determination remains valid.

When an Indian child may be eligible for membership in more than one federally recognized tribe, the court *must* notify *all* of those tribes about the child’s pending case. Michigan tribes often have intertribal agreements on how to handle cases involving a child who is eligible for membership in multiple tribes. If the court provides proper notice, the tribes can decide amongst themselves which tribe is the “Indian child’s tribe” for purposes of ICWA and MIFPA. However, if the tribes cannot agree, the state court may have to make the determination. See the next section for additional guidance.

State Court Determination of the Child’s Tribe

If a state court must determine which tribe is the “Indian child’s tribe” because the Indian child is a member of or eligible for membership in more than one tribe, ICWA and MIFPA require that the Indian tribe with which the Indian child has the more significant contacts be designated as the Indian child’s tribe. When an Indian child is already a member of a tribe, but is also eligible for membership in another tribe, deference should be given to the tribe in which the Indian child is a member, unless otherwise agreed to by the tribes. However, if the Indian child is not a member of any tribe, an opportunity must be provided to allow the tribes to determine which of them should be designated as the Indian child’s tribe. Only if the tribes are unable to reach an agreement, the Final Rule provides that the tribe with which the child has the more significant contacts be designated as the child’s tribe and that the court consider, among other factors, the following:

- 1) Preference of the parents for membership of the child;
- 2) Length of past domicile or residence on or near the reservation of each tribe;
- 3) Tribal membership of custodial parent or Indian custodian;

- 4) Interest asserted by each tribe in the child custody proceeding;
- 5) Whether there has been previous adjudication with respect to the child by a court of one of the tribes; and
- 6) Self-identification by the child.

Final Rule, 81 Fed Reg at 38870.

Once the state court determines the Indian child's tribe, the judge must record both the determination and the supporting reasoning on the record. A written statement of the judge's decision and reasoning must be sent to each party and to each person, tribe, or other governmental agency that received notice of the proceeding. This determination for ICWA purposes does not constitute a determination for any other purpose. *Id.*

If a court cannot identify a child's tribe, the court must send a notice of that fact to the U.S. Department of the Interior's regional Bureau of Indian Affairs director at the following address:

Director, Midwest Regional Office
Bureau of Indian Affairs
Department of the Interior
Norman Pointe II Building
5600 W. American Blvd., Suite 500
Bloomington, MN 55437
Phone: (612)713-4400

The BIA Agency located in Michigan may also be able to help with questions or concerns.

Michigan Agency
Bureau of Indian Affairs
Department of the Interior
2845 Ashmun Street
Sault Ste. Marie, MI 49783
Phone: (906) 632-6809

III. How to Properly Provide Notice under State and Federal Law

The most important procedural aspect of both MIFPA and ICWA is the proper notice of the parents, Indian custodian, and child's tribe. If the notice is done improperly at the outset, the child's permanence is delayed and a case may have to be completely redone. *See In re Morris*, 491 MICH. 81, 89 (2012).

Notice must be mailed to the child's tribe, parent, and/or Indian custodian:

1. via registered mail, return receipt requested;
2. with the information required by both MIFPA and the Final Rule.

MIFPA requires that if the Department is “able to make an initial determination as to which Indian tribe or tribes a child brought to its attention may be a member, the department shall exercise due diligence to contact the Indian tribe or tribes in writing so that the tribe may verify membership or eligibility for membership.” Even if the Department is unable to make an initial determination, at a minimum, the Department must “contact in writing the tribe or tribes located in the county where the child is located” and the Secretary of the Department of the Interior. MCL 712B.9(3).

Best Practices Tip: In *In re NEGP*, 245 Mich App 126 (2001), the Michigan Court of Appeals held that when the child’s father stated that he was affiliated with the “Anishinabe” people, notice sent only to the BIA regional office was not enough to satisfy ICWA’s notice requirements. In that case, the trial court had relied upon the BIA’s response letter stating that the father had no tribal affiliation. However, only the tribe can make that determination. “Anishinabe” might identify any of several tribes, including all of the tribes in Michigan and many outside of Michigan. It was incumbent upon the petitioner to send notice to those potential tribes in addition to notifying the BIA regional office. In the future, if a court becomes aware of a potential affiliation with the “Anishinabe” or the “People of the Three Fires” and is unsure to whom this refers, SCAO recommends contacting the MDHHS Native American Affairs division for assistance.

For *involuntary* proceedings, 25 USC 1912(a) *requires* that, where the court knows or has reason to know that an Indian child is involved, the party who initiates the child custody proceeding must provide notice to the child’s:

- 1) Parents;
- 2) Indian custodians; and
- 3) Any tribe or tribes the child belongs to or is eligible to join.

The Bureau of Indian Affairs regularly updates the Tribal Contacts for ICWA Notice in the federal register. The names on that list are the people each tribe has designated to receive ICWA notices. That list is available at [81 FED. REG. 10887 \(MARCH 16, 2016\)](#). Please note that this list is updated annually. In order to protect the confidentiality of the proceedings, and ensure the timeliness of responses, notice *must* be sent to the designated agents.

For all child custody proceedings defined by MIFPA, both involuntary and voluntary, MIFPA requires notice to parents, Indian custodian, and the child’s tribe. MCL 712B.9(1). In addition, under MCL 712B.7(6), Indian custodians and Indian tribes have the right to intervene at any time during a child custody proceeding in state court. Without notice of the proceedings, they cannot invoke that right. ***So, regardless of the voluntary or involuntary nature of the proceedings, notice should be sent.***

25 USC 1912(a) goes on to state:

If the identity or location of the parent or Indian custodian and the Indian tribe cannot be determined, such notice shall be given to the Secretary [of the Interior]

in the like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

25 USC 1912(a) and MCL 712B.9(1) also specifies *how* the court may provide notice. It must be provided by **registered mail, return receipt requested**. The service must be completed **at least 10 days prior** to an initial hearing. If a notified party subsequently requests additional time to prepare for a hearing, the court must adjourn the case for up to 20 additional days.

The Michigan Supreme Court has spelled out the recordkeeping requirements of trial courts as follows:

Therefore, we hold that trial courts have a duty to ensure that the record includes, at minimum, (1) the original or a copy of each actual notice personally served or sent via registered mail pursuant to 25 USC 1912(a), and (2) the original or a legible copy of the return receipt or other proof of service showing delivery of the notice. In addition, it would be helpful—especially for appellate purposes—for the record to include any additional correspondence between the petitioner, the court, and the Indian tribe or other person or entity entitled to notice under 25 USC 1912(a).

In re Morris, 491 Mich. at 114.

If the court determines that the parent or Indian custodian does not understand the written notice due to inadequate comprehension of written English, the court must send the notice to the “area director” at the nearest Bureau of Indian Affairs regional office¹⁶ so the BIA can ensure that the notice is explained to the parent or custodian in a language that he or she understands.

Parents cannot waive notice to the child’s tribe. *In re Morris*, 491 Mich 81, 110 (2012).

According to the Final Rule, 81 Fed Reg at 38871, notice of an involuntary proceeding must clearly state all of the following information and be sent to the Indian child’s tribe, parent, and/or Indian custodian:

- 1) The name of the Indian child, the child’s birthdate and birthplace;
- 2) All names known (including maiden, married, and former names or aliases) of the parents, the parents’ birthdates and birthplaces, and Tribal enrollment numbers if known;
- 3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;
- 4) The name of each Indian tribe(s) in which the child is a member or may be eligible for membership;
- 5) All names known, and current and former addresses of the Indian child’s biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases, birthdates, places of birth and death, tribal enrollment numbers, and/or other identifying information;

¹⁶ Area Director – Bureau of Indian Affairs – Minnesota address on previous page.

- 6) A copy of the petition, complaint, or other document by which the proceeding was initiated, and if a hearing has been scheduled, information on the date, time, and location of the hearing;
- 7) Statements setting out:
 - a. The name of the petitioner and the name and address of petitioner's attorney;
 - b. The absolute right of the biological parents, the Indian custodians, and the child's tribe to intervene in the proceedings;
 - c. The right of the any parent or Indian custodian of the child to intervene in the proceedings;
 - d. The Indian tribe's right to intervene at any time in a State court proceeding;
 - e. If the parent(s) or Indian custodian(s) is unable to afford counsel based on a determination of indigence by the court, parent(s) or Indian custodian(s) has the right to court appointed counsel;
 - f. The right to be granted, upon request, up to 20 additional days to prepare for the proceedings due to circumstances of the particular case;
 - g. The right of the parent or Indian custodian or tribe to petition the court for transfer of the proceeding to tribal court;
 - h. The mailing addresses and telephone numbers of the court and information related to all parties to the proceeding and individuals notified under this section;
 - i. The potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians; and
 - j. That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.

Timelines After Notice

No foster care placement or termination of parental rights proceeding may be held until at least:

- 1) 10 days after the receipt of notice by the Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the party seeking placement) and parent;
- 2) 30 days after the parent or Indian custodian has received notice in accordance with 25 USC 1912(a), if the parent or Indian custodian has requested an additional 20 days to prepare for the proceeding; and
- 3) 30 days after the Indian child's tribe has received notice in accordance with 25 USC 1912(a), if the Indian child's tribe has requested an additional 20 days to prepare for the proceeding.

See MCL 712B.9 and Final Rule, 81 Fed Reg at 38871.

In addition, the court should allow alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

Improper Jurisdiction

If a state court discovers that it has erroneously exercised jurisdiction over an Indian child because the Indian child resides or is domiciled on a reservation, or is under tribal court jurisdiction at the time of referral, the state court must dismiss its case because the tribal court has exclusive jurisdiction in those circumstances.

Tribal Intervention

25 USC 1911(c) and MCL 712B.7(6) make it clear that, in any state court proceeding defined as a “child custody proceeding” by ICWA or MIFPA, both the child’s Indian custodian and the child’s tribe have a right to intervene at *any* point in the proceedings. Sometimes a tribe will intervene, but then opt not to appear at a hearing due to geographical or scheduling limitations, or seek a transfer. ICWA and MIFPA apply throughout a case whether a tribe intervenes or not, if tribal representative appear for a hearing or not, or if a tribe requests a transfer of jurisdiction or not. MIFPA also clarifies that an official tribal representative has the right to participate in any state court proceedings subject to ICWA and MIFPA. MCL 712B.7(7). Furthermore, this person need not be an attorney. MCL 712B.3(r). See this guide’s [TRANSFER TO TRIBAL COURT](#) section. However, once a tribe has intervened, they have full rights as a party, and receive all orders, reports, or other necessary information.

Transfer to Tribal Court

Both MIFPA and ICWA recognize the concurrent, but presumptively, tribal jurisdiction over proceedings involving Indian children not residing or domiciled on the reservation, and seeks to protect not only the rights of the Indian child as an Indian, but the rights of Indian communities and tribes in protecting their children. Thus, whenever a parent or tribe seeks to transfer a child custody proceeding to tribal jurisdiction it is presumptively in the best interests of the Indian child, and consistent with state and federal law, to transfer the case to tribal jurisdiction.

Pursuant to 25 USC 1911(b) and MCL 712B.7(3), when an Indian child resides off the tribe's reservation, if a parent, an Indian custodian, or the tribe requests a transfer to a tribal court, the state court, in the absence of good cause, *must* transfer the case to the appropriate tribal court unless:

- 1) a parent objects; or
- 2) the tribal court declines to accept the transfer.

I. Petitions to Transfer

A parent, Indian custodian, or tribe may request (orally or in writing) that the state court transfer the Indian child's custody proceeding to the tribal court of the child's tribe. The right to request a transfer is available at *any* stage of any Indian child custody proceeding, and occurs with each proceeding. Final Rule, 81 Fed Reg at 38872. The tribal court must then decide whether to accept or decline the transfer request. SCAO recommends that state courts close a case only after they receive notification from the tribe that its court has formally accepted the case. The tribal court always has the option to not accept the transfer of the case. In addition, a tribal court may reject transfer of a case early on, and then accept it at a different stage of the proceedings. *See In re Spears*, 309 Mich App 658, 673-4 (2015), *appeal denied*, 497 Mich 1040 (2015); *see also* Final Rule 81 Fed Reg at 38872.

II. Good Cause

MCL 712B.7(5) allows a state court to determine there is good cause not to transfer a case to tribal court only if the person opposing the transfer shows by clear and convincing evidence that either of the following applies:

- 1) The Indian tribe does not have a tribal court;
- 2) The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to those parties or witnesses that the Indian tribe is unable to mitigate.

See In re Spears, 309 Mich App. 658 (2015), *appeal denied*, 497 Mich 1040 (2015)(holding these are the only two acceptable good cause exceptions to deny transfer to tribal court under Michigan law).

Outside of the two good cause exceptions, only a parent can veto a transfer. 25 USC 1911(b); MCL 712B.7(3). Any other party may object to the transfer but must demonstrate good cause to deny the transfer request. “Good cause” is a high standard, and the burden is on the party seeking to block transfer to show that good cause exists. When the opposition to a transfer comes from a party other than a parent, the court should hold a hearing to allow all parties to express their views. There is no requirement that a transfer request be made in writing.

Because there are only two good cause exceptions in Michigan law, courts may not consider whether the case is at an advanced stage of the proceedings or whether transfer would result in a change in the placement of the child. *See also* Final Rule, 81 Fed Reg at 38872. In addition, state law and federal regulations prohibit courts from considering the adequacy of the tribe, the tribal court, or tribal social services, the socioeconomic conditions or any negative perception of Tribal or BIA social services or justice systems, or the child’s cultural connections with the Tribe or reservation when determining good cause. MCL 712B.7(4); Final Rule, 81 Fed Reg at 38873.

Placement of Indian Children

ICWA and MIFPA mandate specific placement priorities for children being adopted and placed in foster care. Potential placements must be considered in the order specified by ICWA and MIFPA unless a different preference is established by tribal code or resolution. However, after exhausting the placement preferences, a court may override ICWA’s priority for good cause. While ICWA does not define what constitutes “good cause,” MIFPA does. This section examines the placement preferences and lists what MIFPA details as good cause to depart from them.

Both ICWA and MIFPA require courts to consider the best interests of the Indian child. ICWA states:

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the *placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture*, and by providing for assistance to Indian tribes in the operation of child and family service programs.

25 USC 1902 (emphasis added).

MIFPA states:

In Indian child custody proceedings, the best interests of the Indian child shall be determined, in consultation with the Indian child's tribe, in accordance with the Indian child welfare act, and the policy specified in this section. Courts shall do both of the following:

(a) Protect the best interests of Indian children and promote the stability and security of Indian tribes and families.

(b) Ensure that the department uses practices, in accordance with the Indian child welfare act, this chapter, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian children and, when an out-of-home care placement, adoptive placement, or preadoptive placement is necessary, *place an Indian child in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.*

MCL 712B.5 (emphasis added).

I. Adoption Placement Preferences

25 USC 1915(a) and MCL 712B.23(2) require that when placing Indian children for adoption, state courts must, absent good cause to the contrary, give preference to potential adoptive parents in the following order:

- 1) A member of the child's extended family.¹⁷
- 2) Other members of the Indian child's tribe.
- 3) Other Indian families, including families of unwed individuals.

Best Practices Tip: For those voluntary proceedings in which a biological parent has requested anonymity, the court needs to weigh that request with the interest of the tribe in the placement of the child. However, the Michigan Court of Appeals in *In re KMN*, 309 Mich App 274, 291; 870 NW2d 75, 84 (2015), held that the mother's preference for a non-MIFPA compliant placement in a direct placement adoption was not considered "good cause" to deviate from the placement preferences. Mother did not request anonymity. *See also Matter of Baby Girl Doe*, 262 Mont 380; 865 P2d 1090 (1993). The new Final Rule states that courts must "give weight" to a consenting parent's request for anonymity. Final Rule, 81 Fed Reg at 38874. The Final Rule also allows for a parent's preference after attesting they have reviewed placements compliant with the law to be good cause to deviate. *Id.* Given this current conflict in authorities, contacting and working with the tribe in voluntary proceedings is the best practice to ensure parents' due process rights are protected, the provisions of MIFPA and ICWA are followed, and the child's permanent placement is not disrupted.

¹⁷ MCL 712B.3(f) defines "extended family member" as "means that term as defined by the law or custom of the Indian child's tribe or, in the absence of that law or custom, means a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent and includes the term "relative" as that term is defined in section 13a(j) of chapter XIIA." §1903(2) states that "extended family member" shall be defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. Neither law differentiates between Native and non-Native relatives.

If the Indian child's tribe establishes a different order of preference for adoption placement, the state court must follow that order. MCL 712B.23(6). Where appropriate, a state court may also consider the wishes of the Indian child or the child's biological parents. MCL 712B.23(5); 25 USC 1915(c).

II. Foster Care Placement Options

For foster care or preadoptive placements, MCL 712B.23(1) and 25 USC 1915(b) require placing the child in the least restrictive setting that best approximates a family and in which the child's special needs may be met, and within reasonable proximity to the child's home, taking into account any special needs of the child.

MIFPA goes on to list the foster care placement preferences as follows:

Absent good cause to the contrary, the foster care or preadoptive placement of an Indian child must be in the following order of preference:

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

If the Indian child's tribe establishes a different order of preference for foster care placement, the state court must follow that order. MCL 712B.23(6). Where appropriate, a state court may also consider the wishes of the Indian child or the child's biological parents. MCL 712B.23(5); 25 USC 1915(c).

The state must maintain records that show the state's efforts to comply with the placement preferences specified by the tribe or requested by the child or the child's parent. Courts must ask for specifics and allow caseworkers an opportunity to detail the state's compliance efforts on the record. By federal regulation, these records must contain:

- (1) A record of every voluntary or involuntary foster care, preadoptive, and adoptive placement of an Indian child;
- (2) The record must contain the petition or complaint, all substantive orders entered in the child custody proceeding;
- (3) the complete record of the placement determination, including but not limited to the findings in the court record and the social worker's statement; and
- (4) if the placement is not compliant, detailed documentation of the efforts to comply with the placement preferences.

These records must be provided within 14 days upon request of the Secretary or the child's Indian tribe. Final Rule, 81 Fed Reg at 38875-6.

Some initial foster care placements may not comply with the placement preferences established by MIFPA and ICWA because the placement followed an emergency removal or because no

ICWA-compliant placement was initially available. As required by law, courts must make sure that MDHHS *diligently and in good faith* continues to search for a MIFPA and ICWA-compliant placement so that the child can be moved to that placement as soon as possible. MCL 712B.23(4). If the child must be placed temporarily outside of the preferences established in MIFPA and ICWA, the court must require MDHHS to contact the child's tribe for assistance in locating an ICWA-compliant placement.¹⁸ *Id.*

III. Good Cause to Modify Placement Preferences for Either Foster Care or Adoption Placement

MIFPA places the burden of establishing good cause not to follow the order of preference on the party requesting the deviation.¹⁹ MIFPA also states that:

(5) The court's determination of good cause to not follow the order of preference shall be based on 1 or more of the following conditions:

- (a) A request was made by a child of sufficient age.
- (b) A child has an extraordinary physical or emotional need as established by testimony of an expert witness.

MCL 712B.23(5).

The Michigan Court of Appeals has held that only the two exceptions listed in MCL 712B.23(5) constitute good cause under state law. *In re KMN*, 308 Mich App 274, 291 (2015). However, since that decision, binding federal regulations now provide additional good cause reasons for not following the placement preferences. They include the following:

- (1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options that comply with the order of preferences;
- (2) The presence of a sibling attachment that can be maintained *only* through a particular placement;
- (3) the extraordinary physical, mental, or emotional needs of the Indian child, such that specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;
- (4) the unavailability of a suitable placement after a diligent search.

Final Rule, 81 Fed Reg at 38874.

Two Important Caveats:

1. The standards for determining whether a placement is unavailable under (4) must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's

¹⁸ The tribe may determine that a tribal resolution changing the placement preferences is in order.

¹⁹ MCL 712B.23(3).

parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties, and may not be based on the socio economic status of the placement. Final Rule, 81 Fed Reg at 38874-5.

2. Neither the court-perceived best interests of the child nor established bonding with a current custodian can constitute good cause to disregard MIFPA or ICWA's placement preferences. If a child is initially placed outside of the placement preferences because no ICWA-compliant placement is available, but one becomes available later, bonding does not constitute good cause to leave the child in the initial placement. Final Rule, 81 Fed Reg at 38875.

The party requesting a deviation from MIFPA or ICWA's preferences has the burden of establishing good cause.²⁰ MCL 712B.23(3).

Best Practices Tip: During the original drafting of this Guide, many tribal representatives from tribes in Michigan expressed concern that MDHHS was considering a placement compliant with the placement preferences if the child was placed in a non-Indian foster home where the child's siblings already have been placed. The position of the committee as a whole was that the siblings' presence does NOT cause the new placement to satisfy the extended family requirement. The siblings are not the placement, the foster parents are. The foster parents must meet the placement preferences of the Indian child's tribe. However, the new federal rule allows for the presence of a sibling to constitute good cause to deviate from the placement preferences, if that placement is the *only* one that can maintain the sibling relationship. Final Rule, 81 Fed Reg at 38874. The best practice is for courts and MDHHS to identify homes that fall within the placement preferences that can accommodate keeping siblings together.

If the Placement Preference Will Not Meet the MIFPA and ICWA Requirements

If a diligent search for a foster family does not find a MIFPA compliant placement, then the court may have to place the Indian child elsewhere in order to protect the child. Before ordering such a placement, a court must ascertain exactly what actions have been taken to ensure that all possible MIFPA compliant placement options have been identified and evaluated. MIFPA states that:

(4) The court shall not find good cause to deviate from the placement preferences stated in this section without first ensuring that all possible placements required under this section have been thoroughly investigated and eliminated. All efforts made under this section must be provided to the court in writing or stated on the record. The court shall address efforts to place an Indian child in accordance with this section at each hearing until the placement meets the requirements of this section.

MCL 712B.23(4).

²⁰ Note the special circumstances surrounding the placement preferences and certain guardianship petitions discussed in the guardianship section below.

Regardless of whether a MDHHS caseworker is involved, courts should require answers to the following questions under oath:

- 1) Has someone inquired of the family whether there are any family members available to have the child placed with them?
- 2) Has someone made contact with the relatives provided by the family members?
- 3) Has petitioner reviewed the tribe's placement preferences to determine if there are placements meeting those criteria?
- 4) If no family has been provided as possible placement, has someone contacted the tribe to determine if it knows of any family members or tribally licensed foster homes or institutions capable of caring for the child?
- 5) Has someone looked for Indian families in the area who could provide a foster home? These do not have to be members of the child's own tribe.
- 6) Has MDHHS helped with the search for possible placements?

If the court makes such inquiries on the record and concludes that all MIFPA preferred options have been pursued, the court may then state on the record that it finds the required "good cause" to depart temporarily from MIFPA and ICWA's placement preferences.

Note: If the child's extended family is not considered for foster care placement due to geographic distance, the agency and foster parents should provide contact between the children and the extended family. Once reunification is no longer the goal, the placement preferences for adoption require the children to be placed with family.

IV. Court-Ordered Direct Placements and Their Effects on Title IV-E Funding

As a general rule, "court-ordered" placements do not qualify for Title IV-E funding. These are placements where the court chooses the child's placement without bona fide consideration of MDHHS's placement recommendation. These "court-ordered placements" are distinct from those placements where the court merely specifies the child's placement in the court order to endorse or approve MDHHS's placement choice.

Best Practices Tip: SCAO recommends that whenever possible, courts should do the following to ensure Title IV-E funding for an Indian child who is otherwise Title IV-E eligible:

- Require MDHHS to maintain care and custody of the child, and order the caseworker to follow ICWA/MIFPA placements preferences unless those are changed by a tribal resolution.
- Work collaboratively with the caseworker to make sure that ICWA/MIFPA placement preferences are followed.
- Ask the caseworker under oath if the tribe has a placement preference different from the one specified in ICWA/MIFPA and if the caseworker has discussed this with the tribe.

- Ask the caseworker under oath and on the record to describe in detail the caseworker’s investigation of each ICWA/MIFPA-preferred placement and why, in the caseworker’s opinion, none was appropriate, including discussions and collaboration with the tribe.
- Order a direct placement only after the above testimony is on the record and if, in the court’s opinion, none of the options mentioned above will protect the child and comply with ICWA.

Foster Care

This discussion of MIFPA and ICWA foster care rules assumes that you have read the earlier sections of this guide. Readers can use the hyperlinks below to readily refer to those earlier sections.

[*ICWA FUNDAMENTALS*](#)

[*IDENTIFYING AN INDIAN CHILD OR INDIAN TRIBE; NOTIFICATION REQUIREMENTS*](#)

[*PLACEMENT OF INDIAN CHILDREN*](#)

MIFPA defines “foster care placement” as, “any action removing an Indian child from his or her parent or Indian custodian, and where the parent or Indian custodian cannot have the child returned upon demand but parental rights have not been terminated, for temporary placement in, and *not limited to*, one or more of the following: (1) foster care home or institution, (b) the home of a guardian or limited guardian under Part 2 of Article V of the Estates and Protected Individuals Code,²¹ or (c) a juvenile guardianship under chapter XIIA”. (emphasis added).

25 USC 1903(1)(i) defines “foster care placement” slightly differently than Michigan law does. In ICWA cases, it means “... any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian *cannot* have the child returned upon demand, but where parental rights have *not* been terminated.” (emphasis added).

I. Revocation of Consent for Foster Care Placement

When no one has alleged abuse or neglect, a parent or Indian custodian who consents to the voluntary placement of an Indian child into foster care (e.g., by petitioning the court for a probate guardianship) may withdraw the consent at any time. The court in *Empson-Laviolette v Crago*, 280 Mich App 620 (2008), held that ICWA applies to guardianship proceedings because guardianships fit the definition of “foster care placement” in 25 USC 1903(1)(i). Additionally, the court held that the child’s mother could revoke her consent to the guardianship pursuant to

²¹ 1998 PA 386, MCL 700.5201 to 700.5219.

her authority under 25 USC 1913(b).²² Because of this case, MIFPA includes guardianships in its definitions of a foster care proceeding.

If a parent or previous Indian custodian withdraws the consent to placement, the court must return the child to the parent or Indian custodian immediately. A parent must send written notice to the court “substantially in compliance on a form approved by” SCAO. MCL 712B.13(4). If the guardianship was not created from consent, i.e., an involuntary guardianship (otherwise known as a juvenile guardianship), it would follow that there could be no withdrawal of consent. If the guardianship is involuntary, it must comply with MCL 712B.15. *See also* Final Rule, 81 Fed Reg at 38874.

II. New Placement

25 USC 1916(b) requires compliance with ICWA any time an Indian child is moved from one foster home or institution to a different foster care, preadoptive, or adoptive placement -- unless the move returns the child to the parents or a previous Indian custodian. When ICWA applies, it requires sending notice of the transfer to the Indian child’s parents or previous Indian custodian, and tribe. They may waive this right to notice, but they also may revoke that waiver at any time.

Under MIFPA, an Indian child “may be removed from a parent or Indian custodian, [and] placed into a foster care placement,” only upon clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. MCL 712B.15(2). In addition, the active efforts must be shown to be unsuccessful, and it must also be shown 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 Indian child.” *Id.* Active efforts “must take into account the prevailing social and cultural conditions and way of life of the Indian child’s tribe.” *Id.* See the [ACTIVE EFFORTS](#) section of this Guide for specifics.

For consent for voluntary placement of the Indian child in foster care, the name and address of the person or entity who will arrange the foster care placement as well as the name and address of the prospective foster care parents if known at the time must be provided. MCL 712B.13(1)(f). In addition, if the consent is for a direct placement adoption, the parent or guardian must receive a list of community and federal resource supports and a copy of the written document described in section 6(1)(c) of the Foster Care and Adoption Services Act. MCL 712B.13(6)(a).

III. Petition to Invalidate a Foster Care Placement Order

25 USC 1914 and MCL 712B.15(5) allows the parent or Indian custodian of an Indian child to petition any court of competent jurisdiction to invalidate the child’s foster care placement if the

²² The court also held that ICWA preempts a stay of proceedings imposed pursuant MCL 722.26b(4) because federal law supersedes state law “if the state law stands as an obstacle to the accomplishment of the full objectives of Congress.” The stay allowed under state law prevents the child’s mother from invoking her rights under §1913(b), but ICWA preempts the stay, thereby allowing her to revoke her consent to the guardianship at any time.

placement violated 25 USC 1911, 1912, or 1913, or MCL 712B.15. See also, MCL 712B.39 for further rights to request to invalidate an action under MIFPA.

- 1911 lists ICWA's requirements for jurisdiction, transfer of proceedings, and intervention.
- 1912 outlines the requirements for notice, appointment of counsel, examination of reports, preventive or rehabilitative programs, and orders for foster care placement or parental rights termination.
- 1913 governs the voluntary foster care placements and voluntary terminations of parental rights.

IV. Absent Without Legal Permission (AWOLP)

If a child under the jurisdiction of a court runs from his or her placement, the court will place that child on the court's AWOLP docket and conduct periodic review hearings regarding the efforts to locate the child.²³

SCAO recommends that as soon as a court learns that an AWOLP child is also an Indian child under MIFPA or ICWA, the court or local MDHHS staff should immediately notify the Indian child's tribe. Primarily, the tribe has an interest in knowing that one of its members has run away from foster care placement. Additionally, the tribe may have resources for locating the child. Appendix D has the contact information for each federally recognized tribe in Michigan, including the designated ICWA agents. The BIA website has contact information for all federally recognized tribes in the United States.

Adoption

The following discussion of MIFPA and ICWA's adoption provisions assumes that you have read the earlier sections in this guide. Those sections are listed below in hyperlink format so readers can readily refer to them while reading this section.

[*ICWA FUNDAMENTALS*](#)

[*IDENTIFYING AN INDIAN CHILD OR INDIAN TRIBE; NOTIFICATION REQUIREMENTS*](#)

[*PLACEMENT OF INDIAN CHILDREN*](#)

An adoption under ICWA and MIFPA can be voluntary or involuntary.²⁴ If the parents of an Indian child decide to voluntarily place the child for adoption, they will first agree to a

²³ The court adds the child to the AWOLP docket once notified by MDHHS that the child ran from placement.

²⁴ A voluntary adoption does not mean that ICWA or MIFPA may be ignored. It means only that the Indian child's parent voluntarily consents to the termination of parental rights and subsequent adoption of the child. Certain parts of MIFPA and ICWA apply to voluntary proceedings including the valid consent document discussed below. See *Empson-Laviolette v Crago*, 280 Mich App 620 (2008).

termination of their parental rights, and then sign a consent form allowing the adoption. An involuntary adoption typically follows an *involuntary* termination of parental rights. Releases at the point of termination are common, too. These should not be considered voluntary proceedings, even if the parent has consented to release.

Best Practices Tip: If a parent is voluntarily releasing parental rights as a result of a state petition against them, follow the procedures for an involuntary termination of parental rights, including qualified witness testimony and the burden of proof.

Under MIFPA, adoptive placement is defined as “permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption.” MCL 712B.3(b)(iv).

I. Notice and Anonymity

Even if a parent asks for anonymity, the court or agency must give notice of the proposed adoption to the tribe. Although ICWA does not expressly require notice of *voluntary* adoptions, MIFPA does. MCL 712B.9(1). Notice must go to the designated tribal agent for service to ensure confidentiality. While tribal governments have experience handling confidential records of all kinds, if the state or private agency sends the notice to the wrong department, the confidentiality of the notice may be compromised.

Best Practices Tip: For those voluntary proceedings in which a biological parent has requested anonymity, the court needs to weigh that request with the interest of the tribe in the placement of the child. However, the Michigan Court of Appeals in *In re KMN*, 309 Mich App 274, 291; 870 NW2d 75, 84 (2015), held that the mother’s preference for a non-MIFPA compliant placement in a direct placement adoption was not considered “good cause” to deviate from the placement preferences. Mother did not request anonymity. *See also Matter of Baby Girl Doe*, 262 Mont 380; 865 P2d 1090 (1993). The new Final Rule states that courts must “give weight” to a consenting parent’s request for anonymity. Final Rule, 81 Fed Reg at 38874. The Final Rule also allows for a parent’s preference to be good cause, but only after attesting they have reviewed placements that are compliant with the law. *Id.* Given this current conflict in authorities, contacting and working with the tribe in voluntary proceedings is the best practice to ensure parents’ due process rights are protected, the provisions of MIFPA and ICWA are followed, and the child’s permanent placement is not disrupted.

II. To Ensure a Valid Consent to Adoption

MIFPA and ICWA have specific requirements for valid consents to foster care placements and preadoptive placements. See [*ICWA FUNDAMENTALS: VOLUNTARY PROCEEDINGS*](#) earlier in this guide. In order to ensure a valid consent to adoption under MIFPA, the law requires the following:

1. The consent must be on a SCAO approved form, in writing, before a judge of competent jurisdiction, with the judge’s certificate that the terms of the consent were fully

explained in detail and fully understood. The judge must also certify that the parent understood English or that the consent was translated so the parent could fully understand. The consent cannot be until 10 days after the birth of a child. MCL 712B.13(1)(a).

2. Notice must be given to the parent or Indian custodian, and tribe in compliance with the notice provisions of MIFPA and ICWA. MCL 712B.13(1)(b).

3. If the consent is for a guardianship, MCL 712B.25(3) provides that the consent must comply with the requirements found in MCL 712B.13. If the parents do not execute a consent, MCL 712B.25(3) provides that the requirements of MCL 712B.15 must be met. If the consent is for an adoption, MCL 712B.27 applies.

4. If the consent is for a direct placement adoption, the parent must also provide a signed and verified statement that she or he received certain information and did not receive unlawful payments, as detailed in ICWA Fundamentals and MCL 712B.13(6).

5. Finally, the consent must contain certain information as detailed earlier in ICWA Fundamentals and in MCL 712B.13(2).

Consent to Guardianship, Foster Care Placement or Termination of Parental Rights

Pursuant to 25 USC 1913(a), courts may recognize a parent's consent to a foster care placement or termination of parental rights as valid only if:

- 1) The consent is in writing.
- 2) The consent is executed in writing and recorded before a judge of a court with competent jurisdiction.
- 3) The presiding judge certifies in writing that the terms and consequences of the consent were fully explained (with assistance from a translator if necessary) and were fully understood by the parent or Indian custodian. The court should place a copy of this certification in the court file.
- 4) The consent was signed *more* than 10 days after the birth of the Indian child.

Under MIFPA, for the consent of parents consenting to a guardianship, termination of parental rights, or an adoptive placement, to be valid it:

must be executed on a form approved by the state court administrative office, in writing, 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 into a language that the parent or Indian custodian understood. Any consent given before, or within 10 days after, birth of the Indian child is not valid.

MCL 712B.13(1)(a).

Voluntary Consent Document

Under MIFPA, for a parent voluntarily consenting to a direct placement adoption, including termination of parental rights for that purpose, or a petition for guardianship, the consent must contain the following:

- (a) The Indian child's name and date of birth.
- (b) The name of the Indian child's tribe and any identifying number or other indication of the child's membership in the tribe, if any.
- (c) The name and address of the consenting parent or Indian custodian.
- (d) A sworn statement from the translator, if any, attesting to the accuracy of the translation.
- (e) The signature of the consenting parent, parents, or Indian custodian recorded before the judge, verifying an oath of understanding of the significance of the voluntary placement and the parent's right to file a written demand to terminate the voluntary placement or consent at any time.
- (f) For consent for voluntary placement of the Indian child in foster care, the name and address of the person or entity who will arrange the foster care placement as well as the name and address of the prospective foster care parents if known at the time.
- (g) For consent to termination of parental rights or adoption of an Indian child, in addition to the information in subdivisions (a) to (f), the name and address of the person or entity that will arrange the preadoptive or adoptive placement.

MCL 712B.13(2).

In addition, in a “direct placement” pursuant to MCL 710.22(o) the consent must be accompanied by a verified statement signed by the parent or guardian that contains all of the following:

- (a) That the parent or guardian has received a list of community and federal resource supports and a copy of the written document described in section 6(1)(c) of the foster care and adoption services act, 1994 PA 204, MCL 722.956.
- (b) As required by sections 29 and 44 of chapter X, that the parent or guardian has received counseling related to the adoption of his or her child or waives the counseling with the signing of the verified statement.
- (c) That the parent or guardian has not received or been promised any money or anything of value for the consent to adoption of the child, except for lawful payments that are itemized on a schedule filed with the consent.
- (d) That the validity and finality of the consent are not affected by any collateral or separate agreement between the parent or guardian and the adoptive parent.

(e) That the parent or guardian understands that it serves the welfare of the child for the parent to keep the child placing agency, court, or department informed of any health problems that the parent develops that could affect the child.

(f) That the parent or guardian understands that it serves the welfare of the child for the parent or guardian to keep his or her address current with the child placing agency, court, or department in order to permit a response to any inquiry concerning medical or social history from an adoptive parent of a minor adoptee or from an adoptee who is 18 years or older.

MCL 712B.13(6).

In addition to all of the requirements above, under federal law, the consent must also contain the following:

If there are any conditions to the consent, the written consent must clearly set out the conditions.

Final Rule, at 38873-4.

SCAO recommends that courts ask, under oath and on the record, the following questions to ensure that the consent is valid and that the parents understand the consequences of the consent:

- 1) Is at least one parent an enrolled member of a federally recognized tribe or band? If so, which parent and which tribe?
- 2) Is the child also enrolled or eligible for membership in a federally recognized tribe or band? If so, which tribe?
- 3) Is either parent or child a resident of or domiciled on the reservation?
- 4) Has the tribe received notice of these proceedings? Is the tribe represented here today?
- 5) Has the parent requested anonymity?
- 6) Is the child at least 10 days old?
- 7) Do the parents understand spoken and written English? Do either of them need an interpreter to help them understand the court proceedings or the written consent form?
- 8) Are the parents aware of ICWA's placement preferences? Does their selection of an adoptive family (in private adoption cases) meet these preferences?
- 9) Do the parents know that they can withdraw consent to this adoption at any time prior to the final adoption order?
- 10) Do the parents know that in order to withdraw their consent, they must file a written document with this court?
- 11) Do the parents realize that if they decide to withdraw their consent after the adoption is finalized, they can do that only: (a) within two years of the final adoption order, and then only if (b) their consent was obtained through fraud or duress?
- 12) Have any circumstances surrounding these proceedings made the parents feel undue pressure to complete the adoption?

Note that this consent differs from the consent required for adoptions under MCL 710.43.

III. Revocation of Consent

Under ICWA 25 USC 1913(c) and MIFPA 712B.13(3) parents may withdraw consent to adoptive placement for any reason at any time *prior to the entry of a final decree of adoption*. This was emphasized by *In re Kiogima*, 189 Mich App 6 (1991). The court also distinguished between consent to adoptions from consent to terminations of parental rights, where consent may be withdrawn at any time up to entry of the termination order. However, a voluntary consent to termination of parental rights under the threat of termination by the state should still follow MCL 712B.15, and the court should make the required findings.

To withdraw consent to a direct placement adoption, the parent must file a notice of withdrawal of consent with the court or otherwise testify before the court. MCL 712B.7(6); Final Rule, 81 Fed Reg at 38874.

IV. Withdrawal of Consent Post-adoption

In very limited circumstances, both MCL 712B.27(5) and 25 USC 1913(d) allow the parent to withdraw consent *after* the entry of a final adoption order of an Indian child. The Acts allow this *only* if the court finds that someone used fraud or duress to obtain the parent's initial consent. In that event, the court must vacate the adoption order. Note, however, that a parent has two years post-adoption to claim fraud or duress; after that, the adoption becomes irrevocable.

Upon the parent's filing a petition to vacate the final decree of adoption, the court must notify all the parties to the adoption proceedings, including the child's Tribe, and hold a hearing on the petition. Final Rule, 81 Fed Reg at 38875.

MIFPA also allows parents to withdraw consent after the entry of a final adoption order of an Indian child. The parent may withdraw consent on the grounds that consent was obtained through fraud or duress and may petition the court to vacate the final order of adoption. MCL 712B.27(5). Upon a finding that the consent was obtained through fraud or duress, the court shall vacate the final order of adoption and return the child to the parent. No adoption that has been effective for at least two (2) years may be invalidated under the provisions of this subsection unless otherwise permitted under state law. MCL 712B.27(5).

V. Adoption Vacated

If an Indian child's adoption is vacated or set aside, or if the *adoptive* parents voluntarily consent to the termination of *their* parental rights, the court must notify the child's biological parents. The biological parents may waive their right to receive this notice, but they also may revoke that waiver at any time. 25 USC 1916; Final Rule, 81 Fed Reg at 38875.

Whenever an adoption is set aside, a biological parent or prior Indian custodian may petition the court for the child's return. The court must grant the petition unless a return is not in the child's

best interests. Hearings on these return-of-custody requests must follow all of the requirements outlined in 25 USC 1912.²⁵

VI. Release by Parent Under MCL 710.29

When a parent indicates to the court that they would like to release their parental rights under MCL 710.29, the court should set the matter for a hearing and if the release is for an Indian child, the court must then follow all of the requirements detailed in MCL 712B.15, 712B.25 and 712B.27, including proper notice and consent.

Best Practices Tip: If a parent is voluntarily consenting to either foster care or termination of parental rights as a result of a state petition against them, follow the procedures for an involuntary foster care placement or termination of parental rights, including qualified witness testimony and the burden of proof.

VII. Information Sharing – Request by Adopted Child

Under MIFPA upon application by an Indian individual who has reached the age of 18 and who was subject to adoptive placement, the court that entered the order of adoption shall inform the individual of his or her tribal affiliation, if known, of the individual's biological parents, and provide any information as necessary to protect any rights from the individual's tribal relationship. MCL 712B.27(4).

Adopted Indians who have reached age 18 may ask the court that entered their final adoption order for information about their tribal affiliation. The court must provide the information so that the adult adoptees can protect any rights flowing from their tribal relationships. *See also* Final Rule, 81 Fed Reg at 38875.

Adopted Indian children possess this right to discover their tribal origins even if MIFPA or ICWA did not apply to the original adoption. Therefore, even if the biological *parents* filed a confidentiality request with the central registry, the BIA may identify the child's *tribe* in response to the child's request. This is important because the adoptee probably retains eligibility for membership in that tribe, and membership may confer important rights. Note that the BIA can identify the tribe without violating the biological parents' personal confidentiality request; therefore, if the biological parents filed a confidentiality request, the court should do the following:

- 1) Work with the BIA, which can confidentially ask the tribe whether the child is eligible for membership. *See* Final Rule, 81 Fed Reg at 38875; and

²⁵ These requirements include notice, appointment of counsel, the opportunity to review reports or other documents, and the higher standards of proof for foster care placement orders (probable cause) and parental rights termination (clear and convincing evidence) as described later in this guide in the Foster Care and Termination of Parental Rights sections.

- 2) Release the biological parents' identity to the Indian tribe (but not to the adopted Indian child) with a request that the tribe keep that information confidential. See *In re Hanson*, 188 Mich App 392 (1991).

Best Practices Tip: Courts should obtain and maintain the adopted child's tribal affiliation information from the beginning of the adoption case because the court may need that information later if the child requests it. Also, courts should encourage adoptive parents to enroll the child in her tribe under her new name prior to the child's eighteenth birthday, so the child does not have to seek out her tribe to determine eligibility and preserve her rights.

VIII. Stepparent Adoption

If an Indian child's parent seeks a stepparent adoption by a new spouse, then MIFPA and ICWA apply because it is a termination of parental rights, which is a child custody proceeding under both laws. In order to terminate a parent's rights, a valid consent must be obtained and signed before a judge. Without such a consent, the stepparent adoption may occur only if the non-consenting biological parent's rights are terminated involuntarily after following all of the requirements for termination stated in MCL 712B.15 and 25 USC 1912 (d), (f).

Guardianship

This section implicitly incorporates information from earlier sections of this guide. The hyperlinks below will allow readers to readily refer to that background material while reading this section.

[*ICWA FUNDAMENTALS*](#)

[*IDENTIFYING AN INDIAN CHILD OR INDIAN TRIBE; NOTIFICATION REQUIREMENTS*](#)

[*PLACEMENT OF INDIAN CHILDREN*](#)

ICWA defines "child custody proceedings" as including any "foster care placement." However, ICWA defines the latter phrase broadly to include more than just the foster care placements authorized by Michigan law. MIFPA also includes the definition of "guardianship" as found in the Juvenile Code and the Estates and Protected Individuals Code. MCL 712B.3(b)(i)(B)-(C). The Michigan Court of Appeals has held that ICWA applies to guardianships, based on ICWA's definitions of "child custody proceedings" and "foster care placement." See *Empson-Laviolette v Crago*, 280 Mich App 620 (2008).

ICWA 1903(1)(i) defines "foster care placement" to mean "any action removing an Indian child from his parent or Indian custodian for temporary placement in a foster home or institution or the

home of a **guardian** or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.”

ICWA distinguishes between voluntary and involuntary proceedings. An example of an “involuntary guardianship” would be a juvenile guardianship under MCL 712A.19a or 19c, which a court may order during an abuse and neglect case. An example of a “voluntary guardianship” would be a limited guardianship under MCL 700.5205 in Michigan’s Estates and Protected Individuals Code, where a consent document is executed per MIFPA.

Because ICWA views a guardianship as a “foster care placement,” and because MIFPA includes guardianships in its definition of “child custody proceeding”, this guide’s earlier [FOSTER CARE](#) section covers all ICWA and MIFPA requirements for *juvenile guardianships under MCL 712A.19a or 19c* as these would be treated the same as foster care placements. Please refer to that section for further details.

I. Voluntary Guardianships under MIFPA and ICWA

Under MIFPA, parents must consent to a voluntary guardianship in the same way they consent to a direct placement adoption. MCL 712B.13. See the Guide’s earlier [ADOPTION](#) section for the detailed requirements.

MIFPA allows either parents or an Indian custodian to voluntarily consent to a petition for guardianship. MCL 712B.13(1). To be valid, “consent under this section must be executed on a form approved by the state court administrative office, in writing, 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.” MCL 712B.13(1)(a).

Under MIFPA, a parent or Indian custodian who executes a consent for the purpose of guardianship may withdraw their consent at any time by sending written notice to the court that the parent or Indian custodian revokes consent and wants his or her child returned. MCL 712B.13(4). The court must order the child returned upon demand.

Best Practices Tip: Work closely with a tribe if it intervenes and objects to a voluntary placement petition by a parent. Communication and collaboration between state and tribal courts is the key to successful compliance with state and federal law, and to mitigate litigation that can delay permanency for the child.

If the Indian child’s tribal affiliation is known when a guardianship petition is filed, the state court may refer the petitioner to the tribal court so it can consider the issue. Although the petitioner is not required to file the petition initially in the tribal court, that court may be in a better position to evaluate the need for a guardianship and decide how best to preserve the child’s relationship with his family and tribe.

II. Involuntary Guardianships under MIFPA

For all involuntary guardianships the court must provide notice as prescribed by the Michigan Supreme Court Rules, ICWA, and MIFPA. MCL 712B.25(2). However, if a tribe has exclusive jurisdiction, the court must terminate the guardianship or dismiss the petition for involuntary guardianship. *Id.* In addition, the guardianship placement must meet the placement requirements under MIFPA, be in the child's best interests, and the court must determine whether a lawyer-guardian ad litem should be appointed to represent the Indian child. MCL 712B.25(2)(a)-(d). The SCAO approved form for these guardianships is [PC 651IB](#) (Petition for Appointment of Indian Child [Involuntary Guardianship]).

A parent may consent to a petition for involuntary guardianship, and the parent or Indian custodian may withdraw their consent at any time by written notice to the court. MCL 712B.25(4). Unlike a voluntary guardianship where a parent or guardian may revoke consent, a parent must petition the court to terminate an involuntary guardianship and the court will have a hearing to determine whether to terminate an involuntary guardianship.

Petition for Voluntary Guardianship (MCR 5.404)

SCAO has approved forms for a petition for guardianship for minor Indian child (voluntary). They are forms PC 650i (Petition for Appointment of Limited Guardian of Minor Indian Child) and PC 651ia (Petition for Appointment of Guardian of Minor Indian Child). However, it is still possible for the court to receive petitions on old forms. If a court receives a Petition for Appointment of Guardian of Minor ([PC 651](#)) or a Petition for Appointment of Limited Guardian of Minor ([PC 650](#)), the court should do the following:

- 1) If item number 3 on the PC 651 or the second box in item 4 on the PC 650 is **not** marked, indicating that the child is a member of an American Indian tribe, ask the petitioner to fill out form [650i](#) or [651IA](#).
- 2) If a tribe is listed, the court must ensure that all notices of court proceedings are sent to the tribe.
- 3) If no tribe is listed, the court must ask the petitioner to amend the petition to either identify the tribe or report that the child's tribal affiliation is unknown.

After a guardian is appointed, the court may also direct an LGAL, or a MDHHS or court employee, to investigate the placement, including the child's tribal affiliation. This investigation will ensure that, in the future, proper notice of all court proceedings is sent to the parents and tribe. It will also allow the tribe to intervene and provide assistance to the family, which may rectify the situation that led to the need for the guardianship.

Indian Child's Parent Cannot be Located (MCR 5.109)

The Indian child's parent may be at least temporarily unavailable (e.g., the child unilaterally moved in with neighbors or a friend's family) and unable to give consent to a guardianship under

state law. In that case, the requirements of MCL 712B.15 must be met, as the guardianship would be considered an involuntary proceeding (as to the parents). Prior to the passage of MIFPA, the ICWA committee that crafted the original guide discussed several ways for a judge to handle such a situation. They include, but are not limited to, the following:

The court may order MDHHS or a court employee to investigate the guardianship. The investigation should include a diligent inquiry about the child's possible Indian heritage and tribal affiliation, if unknown at the time of the guardianship petition. When the parents are located and the tribe identified, the court can schedule another hearing on the original petition to give the tribe an opportunity to appear, as well as the child's parents., and to ensure the provisions of MCL 712B.15 are being met. The court should consult the tribe on how best to preserve the Indian family because "active efforts" are still required for an involuntary guardianship, unless the parents have decided to execute consents.

If the child's parents or tribe do not appear at the hearing, then the court can either continue the guardianship or contact Child Protective Services (CPS) at MDHHS, if the circumstances of the case allow (i.e., the parents are unable to be found and have, essentially, abandoned the child).

Best Practice Tip: Once the tribal affiliation is known, the court must provide notice to the tribe and a new hearing on the guardianship petition as soon as possible. If the parents cannot be located, then CPS may be contacted so that caseworkers can provide the culturally appropriate active efforts necessary to maintain the child's tribal ties. It also ensures that a thorough investigative protocol is followed with regard to MIFPA and ICWA placement preferences.

Termination of Parental Rights

This section implicitly incorporates information from earlier sections of this guide. The hyperlinks below will allow readers to readily refer to that background material while reading this section.

[*ICWA FUNDAMENTALS*](#)

[*IDENTIFYING AN INDIAN CHILD OR INDIAN TRIBE; NOTIFICATION REQUIREMENTS*](#)

[*PLACEMENT OF INDIAN CHILDREN*](#)

I. Revocation of Consent to a Termination of Parental Rights

25 USC 1913(c) states that parents may withdraw their consent to a termination for *any* reason -- but only *prior to* the entry of a final decree of termination.

Under MIFPA, a parent may withdraw the consent to termination of parental rights for any reason at any time prior to the entry of a final order of adoption. MCL 712B.13(3)

25 USC 1903(ii) and MIFPA 712B.3(b)(ii) define “termination of parental rights” as “any action resulting in the termination of the parent-child relationship.”

II. Termination of Parental Rights and Stepparent Adoptions

To terminate the parental rights to an Indian child, ICWA §1912(f) requires evidence *beyond a reasonable doubt* – including testimony from a qualified expert witness – that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Before seeking a termination of parental rights, the petitioner must have made the same type of “active efforts” in ICWA [FUNDAMENTALS, ACTIVE EFFORTS](#) section. For additional information please also see [ICWA FUNDAMENTALS, INVOLUNTARY PROCEEDINGS](#) section.

MIFPA has the same requirements as ICWA. MIFPA also provides two categories of persons, in an order of preference, for qualified expert witnesses: (1) A member of the Indian child’s tribe, or witness approved by the Indian child’s tribe, who is recognized by the tribal community as knowledgeable in tribal customs and how the tribal customs pertain to family organization and child rearing practices; and (2) A person with knowledge, skill, experience, training, or education and who can speak to the Indian child’s tribe and its customs and how the tribal customs pertain to family organization and child rearing practices. MCL 712B.17(1). See [ICWA FUNDAMENTALS, QUALIFIED EXPERT WITNESS](#), for more on qualified expert witnesses.

For a discussion on terminating parental rights in order to allow a stepparent adoption, please see the earlier [ADOPTION](#) section.

Emergency Removals & Protective Custody

This section incorporates by reference information from earlier sections of this guide. The hyperlinks below will allow readers to readily refer to that background material while reading this section.

[ICWA FUNDAMENTALS](#)

[IDENTIFYING AN INDIAN CHILD OR INDIAN TRIBE; NOTIFICATION REQUIREMENTS](#)

[PLACEMENT OF INDIAN CHILDREN](#)

When physically located *off* the reservation, an Indian child may be subject to an emergency removal by law enforcement officials acting pursuant to state statutory authority. MIFPA’s standard, MCL 712B.7(2), is the same as ICWA’s: “Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his 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.” 25 USC 1922.

Under MIFPA, the emergency jurisdiction terminates as soon as it is “no longer necessary to prevent imminent physical damage or harm to the child.” MCL 712B.7(2). 25 USC 1922 additionally requires: “The State authority, official, or agency involved shall insure that the emergency removal or 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 subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.” By federal regulation, the emergency proceeding cannot be continued for more than 30 days. Final Rule, 81 Fed Reg at 38872. The state court’s involvement should end as soon as the tribe is ready to take over the case.

Best Practices Tip: Courts may order the caseworker to notify the court as soon as the emergency ends. This will help ensure a timely conclusion of the court’s jurisdiction and placement pursuant to 25 USC 1922 and MCL 712B.7(2).

If the authorities learn of the child’s Indian heritage or tribal affiliation after removal, then the child’s placement must adhere to ICWA and MIFPA’s placement preferences. However, when a child’s Indian heritage and tribal affiliation are unknown at the time of the off-reservation emergency removal, the state agency may request an interim temporary foster care placement order while it works to definitively identify the Indian child and give notice to the child’s tribe.

Whenever a known Indian child is removed from a parent or Indian custodian pursuant to the emergency removal provisions of state law, the law enforcement agency responsible for the removal should ask a MDHHS caseworker to *immediately* ascertain the residence and domicile of the child so that the appropriate tribe can be notified. Meanwhile, the interim placement of the Indian child will proceed exactly as for all other children removed under similar circumstances.

When a petition seeks a state court order authorizing *continued* emergency placement of a child known to be an Indian, the petition should be accompanied by an affidavit containing all of the following information:

- 1) Name, age, and last known address of the Indian child.
- 2) Names and addresses of the child’s parents (or Indian custodians, if any).
- 3) If such persons are unknown, a detailed explanation of what efforts have been made to locate them, including notice to the appropriate Bureau of Indian Affairs Regional Director (see WWW.BIA.GOV);
- 4) The residence and domicile of the Indian child.
- 5) If either the residence or domicile is believed to be on an Indian reservation, then the name of the reservation or Alaska Native village;
- 6) Tribal affiliation of the child and the parents or Indian custodians;
- 7) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

- 8) If the child is believed to reside on the reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction;
- 9) A statement of the efforts that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody; and
- 10) A statement of the imminent physical damage or harm expected and any evidence that the removal or emergency custody continues to be necessary to prevent such imminent physical damage or harm to the child.

Final Rule, 81 Fed Reg at 38872. The Rule states that absent a finding that restoring the child to parent would subject the child to imminent physical damage or harm, the court has been unable to transfer jurisdiction, or it has not been possible to initiate a child custody proceeding as defined by state or federal law, the emergency removal should not continue for more than 30 days. *Id.* Michigan court rules allow temporary emergency custody to continue for not more than 45 days, absent extraordinary circumstances. See MCR 3.967(A). Federal regulations may trump this state court rule.

Conclusion

Please see Appendices A-G for additional ICWA resources.

[APPENDIX A: MICHIGAN INDIAN FAMILY PRESERVATION ACT OF 2012](#)

[APPENDIX B: INDIAN CHILD WELFARE ACT OF 1978](#)

[APPENDIX C: INDIAN CHILD WELFARE ACT FINAL RULE](#)

[APPENDIX D: DESIGNATED ICWA AGENTS, TRIBAL CONTACT INFORMATION AND SERVICE AREA MAPS](#)

[APPENDIX E: MIFPA & ICWA BENCH GUIDE CHECKLIST](#)

[APPENDIX F: JUDICIAL INQUIRIES & ACTIVE EFFORT REQUIREMENTS](#)

[APPENDIX G: FLOW CHARTS²⁶](#)

[APPENDIX H: ADDITIONAL RESOURCES](#)

If you have questions, recommended additions or changes to this Guide, please contact:

²⁶ Flow charts provided by the Native American Rights Fund and the National Resource Directory for Juvenile and Family Court Judges. The website for the Native American Rights Fund has several additional [FLOWCHARTS](#) that judges may find useful. [HTTP://WWW.NARF.ORG/ICWA/RESOURCES/FLOWCHARTS.HTM](http://www.narf.org/icwa/resources/flowcharts.htm)

Child Welfare Services
State Court Administrative Office
P.O. Box 30048
Lansing, MI 48909
(517) 373-8036
FAX (517)373-8922

[HTTP://COURTS.MICHIGAN.GOV/SCAO/SERVICES/CWS/CWS.HTM](http://COURTS.MICHIGAN.GOV/SCAO/SERVICES/CWS/CWS.HTM)

Appendix A: Michigan Indian Family Preservation Act

712B.1: Short Title

Sec. 1. This chapter shall be known and may be cited as the “Michigan Indian family preservation act”.

712B.3: Definitions

This amended section will come into effect May 30, 2016

Sec. 3. As used in this chapter:

(a) “Active efforts” means actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the Indian child with the Indian family. Active efforts require more than a referral to a service without actively engaging the Indian child and family. Active efforts include reasonable efforts as required by title IV-E of the social security act, 42 USC 670 to 679c, and also include, but are not limited to, doing or addressing all of the following:

- (i) Engaging the Indian child, child’s parents, tribe, extended family members, and individual Indian caregivers through the utilization of culturally appropriate services and in collaboration with the parent or child’s Indian tribes and Indian social services agencies.
- (ii) Identifying appropriate services and helping the parents to overcome barriers to compliance with those services.
- (iii) Conducting or causing to be conducted a diligent search for extended family members for placement.
- (iv) Requesting representatives designated by the Indian child’s tribe with substantial knowledge of the prevailing social and cultural standards and child rearing practice within the tribal community to evaluate the circumstances of the Indian child’s family and to assist in developing a case plan that uses the resources of the Indian tribe and Indian community, including traditional and customary support, actions, and services, to address those circumstances.
- (v) Completing a comprehensive assessment of the situation of the Indian child’s family, including a determination of the likelihood of protecting the Indian child’s health, safety, and welfare effectively in the Indian child’s home.
- (vi) Identifying, notifying, and inviting representatives of the Indian child’s tribe to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and actively soliciting the tribe’s advice throughout the proceeding.

- (vii) Notifying and consulting with extended family members of the Indian child, including extended family members who were identified by the Indian child's tribe or parents, to identify and to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.
 - (viii) Making arrangements to provide natural and family interaction in the most natural setting that can ensure the Indian child's safety, as appropriate to the goals of the Indian child's permanency plan, including, when requested by the tribe, arrangements for transportation and other assistance to enable family members to participate in that interaction.
 - (ix) Offering and employing all available family preservation strategies and requesting the involvement of the Indian child's tribe to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child's tribe.
 - (x) Identifying community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child's family with special needs, and providing information about those resources to the Indian child's family, and actively assisting the Indian child's family or offering active assistance in accessing those resources.
 - (xi) Monitoring client progress and client participation in services.
 - (xii) Providing a consideration of alternative ways of addressing the needs of the Indian child's family, if services do not exist or if existing services are not available to the family.
- (b) "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 part 2 of article V of the estates and protected individuals code, 1998 PA 386, MCL 700.5201 to 700.5219.
 - (C) A juvenile guardianship under chapter XIIA.

- (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 section 2(a)(2) to (4) or (d) of chapter XIIA.
 - (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.
- (c) “Court” means the family division of circuit court or the probate court.
- (d) “Culturally appropriate services” means services that enhance an Indian child’s and family’s relationship to, identification, and connection with the Indian child’s tribe. Culturally appropriate services should provide the opportunity to practice the teachings, beliefs, customs, and ceremonies of the Indian child’s tribe so those may be incorporated into the Indian child’s daily life, as well as services that address the issues that have brought the Indian child and family to the attention of the department that are consistent with the tribe’s beliefs about child rearing, child development, and family wellness. Culturally appropriate services may involve tribal representatives, extended family members, tribal elders, spiritual and cultural advisors, tribal social services, individual Indian caregivers, medicine men or women, and natural healers. If the Indian child’s tribe establishes a different definition of culturally appropriate services, the court shall follow the tribe’s definition.
- (e) “Department” means the department of health and human services or a successor department or agency.
- (f) “Extended family members” means that term as defined by the law or custom of the Indian child’s tribe or, in the absence of that law or custom, means a person who has reached the age of 18 and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent and includes the term “relative” as that term is defined in section 13a(j) of chapter XIIA.
- (g) “Foster home or institution” means a child caring institution as that term is defined in section 1 of 1973 PA 116, MCL 722.111.
- (h) “Guardian” means a person who has qualified as a guardian of a minor under a parental or spousal nomination or a court order issued under section 19a or 19c of chapter XIIA, section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and

700.5205, or sections 600 to 644 of the mental health code, 1974 PA 258, MCL 330.1600 to 330.1644. Guardian may also include a person appointed by a tribal court under tribal code or custom. Guardian does not include a guardian ad litem.

- (i) “Guardian ad litem” means an individual whom the court appoints to assist the court in determining the child’s best interests. A guardian ad litem does not need to be an attorney.
- (j) “Indian” means any member of 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 section 1602(c) of the Alaska native claims settlement act, 43 USC 1602.
- (k) “Indian child” means 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.
- (l) “Indian child’s tribe” means the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than 1 tribe, the Indian child’s tribe is the tribe with which the Indian child has the most significant contacts.
- (m) “Indian child welfare act” means the Indian child welfare act of 1978, 25 USC 1901 to 1963.
- (n) “Indian custodian” means 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.
- (o) “Indian tribe” or “tribe” means 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 section 1602(c) of the Alaska native claims settlement act, 43 USC 1602.
- (p) “Indian organization” means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.
- (q) “Lawyer-guardian ad litem” means an attorney appointed under section 21 of this chapter. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section 17d of chapter XIIA. The provisions of section 17d of chapter XIIA also apply to a lawyer-guardian ad litem appointed for the purposes of this chapter under each of the following:
 - (i) Section 5213 or 5219 of the estates and protected individuals code, 1998 PA 386, MCL 700.5213 and 700.5219.

- (ii) Section 4 of the child custody act of 1970, 1970 PA 91, MCL 722.24.
- (iii) Section 10 of the child protection law, 1975 PA 238, MCL 722.630.
- (r) “Official tribal representative” means an individual who is designated by the Indian child’s tribe to represent the tribe in a court overseeing a child custody proceeding. An official tribal representative does not need to be an attorney.
- (s) “Parent” means 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.
- (t) “Reservation” means Indian country as defined in 18 USC 1151 and any lands, not covered under that section, title to which is either 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.
- (u) “Secretary” means the Secretary of the Interior.
- (v) “Tribal court” means 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.
- (w) “Ward of tribal court” means a child over whom an Indian tribe exercises authority by official action in tribal court or by the governing body of the tribe.

712B.5: Best Interests of the Indian Child

Sec. 5. In Indian child custody proceedings, the best interests of the Indian child shall be determined, in consultation with the Indian child's tribe, in accordance with the Indian child welfare act,¹ and the policy specified in this section. Courts shall do both of the following:

- (a) Protect the best interests of Indian children and promote the stability and security of Indian tribes and families.
- (b) Ensure that the department uses practices, in accordance with the Indian child welfare act, this chapter, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian children and, when an out-of-home care placement, adoptive placement, or preadoptive placement is necessary, place an Indian child in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.

712B.7: Exclusive Jurisdiction; Limited Emergency Jurisdiction of State Court; Transfer of Proceedings to Indian Tribe Jurisdiction; Good Cause Determination; Evidence of Good Cause Not to Transfer; Right to Intervene; Right to Participate of Tribal Representatives; Full Faith and Credit to Indian Tribe

*** This amended section will come into effect May 30, 2016***

Sec. 7. (1) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe. 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 his or her residence or domicile.

(2) The state court may exercise limited emergency jurisdiction if an Indian child who resides or is domiciled within the reservation is temporarily off the reservation and the state has removed the Indian child in an emergency situation to prevent imminent physical damage or harm to the Indian child. The court must comply with the emergency removal hearing requirements outlined in Michigan court rules and sections 13a, 14, and 14a of chapter XIIA. The emergency jurisdiction terminates when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child.

(3) In any state court child custody proceeding, for an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the Indian tribe's jurisdiction, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe, provided that the transfer is subject to declination by the tribal court of the Indian tribe.

(4) When a court makes a good cause determination under this section, adequacy of the tribe, tribal court, or tribal social services shall not be considered.

(5) A court may determine that good cause not to transfer a case to tribal court exists only if the person opposing the transfer shows by clear and convincing evidence that either of the following applies:

(a) The Indian tribe does not have a tribal court.

(b) The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to those parties or witnesses that the Indian tribe is unable to mitigate.

(6) In any state court child custody proceeding of an Indian child, the Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the child custody proceeding.

(7) Official tribal representatives have the right to participate in any proceeding that is subject to the Indian child welfare act and this chapter.

(8) This state shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent given to the public acts, records, and judicial proceedings of any other entity.

712B.9. Notice to parent, custodian, or tribe; no proceeding until 10 days after receipt of notice; initial determination as Indian child; circumstances; due diligence in contacting extended family; written determination or oral testimony conclusive; documentation and providing of determination of tribal membership.

Sec. 9. (1) In a child custody proceeding, if the court knows or has reason to know that an Indian child is involved, the petitioner shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending child custody proceeding and of the right to intervene. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary in the same manner described in this subsection. The secretary has 15 days after receipt of notice to provide the requisite notice to the parent or Indian custodian and the tribe.

(2) No foster care placement or termination of parental rights proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding. If the petitioner or court later discovers that the child may be an Indian child, all further proceedings shall be suspended until notice is received by the tribe or the secretary as set forth in this subsection. If the court determines after a hearing that the parent or tribe was prejudiced by lack of notice, the prior decisions made by the court shall be vacated and the case shall proceed from the first hearing. The petitioner has the burden of proving lack of prejudice.

(3) The department shall actively seek to determine whether a child at initial contact is an Indian child. If the department is able to make an initial determination as to which Indian tribe or tribes a child brought to its attention may be a member, the department shall exercise due diligence to contact the Indian tribe or tribes in writing so that the tribe may verify membership or eligibility for membership. If the department is unable to make an initial determination as to which tribe or tribes a child may be a member, the department shall, at a minimum, contact in writing the tribe or tribes located in the county where the child is located and the secretary.

(4) Circumstances under which a court, the department, or other party to a child custody proceeding has reason to believe a child involved in a child custody proceeding is an Indian include, but are not limited to, any of the following:

- (a) Any party to the case, Indian tribe, Indian organization, or public or private agency informs the court that the child is an Indian child.
- (b) Any public or state-licensed agency involved in child protection services or family support has discovered information that suggests that the child is an Indian child.
- (c) The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child.

- (d) The residence or the 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.
- (e) An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

(5) The department shall exercise due diligence to determine, document, and contact the Indian child's extended family members in accordance with the fostering connections to success and increasing adoptions act of 2008, Public Law 110-351. If applicable, determinations and documentation should be conducted in consultation with the child or parent's tribe.

(6) A written determination or oral testimony by a person authorized by the Indian tribe to speak on its behalf, regarding a child's membership or eligibility for membership in a tribe, is conclusive as to that tribe.

(7) The petitioner shall document all efforts made to determine a child's membership or eligibility for membership in an Indian tribe and shall provide them, upon request, to the court, Indian tribe, Indian child, Indian child's lawyer guardian ad litem, parent, or Indian custodian.

712B.11. Right of party to examine reports and other documents

Sec. 11. Each party to a foster care or termination of parental rights proceeding involving an Indian child has a right to examine all reports or other documents filed with the court upon which any decision with respect to that proceeding may be based.

712B.13. Requirements for voluntary consent to guardianship, adoptive placement, or termination of parental rights; withdrawal of consent; finding of culturally appropriate services; direct placement consent accompanied by verified statement.

*** This amended section will come into effect May 30, 2016***

Sec. 13. (1) If both parents or Indian custodian voluntarily consent to a petition for guardianship under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, or if a parent consents to adoptive placement or the termination of his or her parental rights for the express purpose of adoption by executing a release under sections 28 and 29 of chapter X, or consent under sections 43 and 44 of chapter X, the following requirements must be met:

- (a) To be valid, consent under this section must be executed on a form approved by the state court administrative office, in writing, 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 into a language that the parent or Indian custodian understood. Any consent given before, or within 10 days after, birth of the Indian child is not valid.

- (b) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter.
- (c) The voluntary custody proceeding shall be conducted in accordance with Michigan supreme court rules and the following statutes:
 - (i) In a guardianship proceeding under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, section 25 of this chapter also applies.
 - (ii) In an adoption proceeding, section 27 of this chapter also applies.

(2) Consent described under subsection (1) must contain the following information:

- (a) The Indian child's name and date of birth.
- (b) The name of the Indian child's tribe and any identifying number or other indication of the child's membership in the tribe, if any.
- (c) The name and address of the consenting parent or Indian custodian.
- (d) A sworn statement from the translator, if any, attesting to the accuracy of the translation.
- (e) The signature of the consenting parent, parents, or Indian custodian recorded before the judge, verifying an oath of understanding of the significance of the voluntary placement and the parent's right to file a written demand to terminate the voluntary placement or consent at any time.
- (f) For consent for voluntary placement of the Indian child in foster care, the name and address of the person or entity who will arrange the foster care placement as well as the name and address of the prospective foster care parents if known at the time.
- (g) For consent to termination of parental rights or adoption of an Indian child, in addition to the information in subdivisions (a) to (f), the name and address of the person or entity that will arrange the preadoptive or adoptive placement.

(3) If the placement is for purposes of adoption, a consent under subsection (1) of the Indian child's parent must be executed in conjunction with either a consent to adopt, as required by sections 43 and 44 of chapter X, or a release, as required by sections 28 and 29 of chapter X. A parent who executes a consent under this section may withdraw his or her consent at any time before entry of a final order of adoption by filing a written demand requesting the return of the Indian child. Once a demand is filed with the court, the court shall order the return of the Indian

child. Withdrawal of consent under this section constitutes a withdrawal of a release executed under sections 28 and 29 of chapter X or a consent to adopt executed under sections 43 and 44 of chapter X.

(4) A parent or Indian custodian who executes a consent under this section for the purpose of guardianship may withdraw his or her consent at any time by sending written notice to the court substantially in compliance on a form approved by the state court administrative office that the parent or Indian custodian revokes consent and wants his or her Indian child returned.

(5) A release executed under sections 28 and 29 of chapter X during a pendency of a proceeding under section 2(b) of chapter XIIA is subject to section 15 of this chapter. If the release follows the initiation of a proceeding under section 2(b) of chapter XIIA, the court shall make a finding that culturally appropriate services were offered.

(6) A parent who executes a consent to adoption under sections 43 and 44 of chapter X may withdraw that consent at any time before entry of a final order for adoption by filing notification of the withdrawal of consent with the court. In a direct placement, as defined in section 22(o) of chapter X, a consent by a parent or guardian shall be accompanied by a verified statement signed by the parent or guardian that contains all of the following:

(a) That the parent or guardian has received a list of community and federal resource supports and a copy of the written document described in section 6(1)(c) of the foster care and adoption services act, 1994 PA 204, MCL 722.956.

(b) As required by sections 29 and 44 of chapter X, that the parent or guardian has received counseling related to the adoption of his or her Indian child or waives the counseling with the signing of the verified statement.

(c) That the parent or guardian has not received or been promised any money or anything of value for the consent to adoption of the Indian child, except for lawful payments that are itemized on a schedule filed with the consent.

(d) That the validity and finality of the consent are not affected by any collateral or separate agreement between the parent or guardian and the adoptive parent.

(e) That the parent or guardian understands that it serves the welfare of the Indian child for the parent to keep the child placing agency, court, or department informed of any health problems that the parent develops that could affect the Indian child.

(f) That the parent or guardian understands that it serves the welfare of the Indian child for the parent or guardian to keep his or her address current with the child placing agency, court, or department in order to permit a response to any inquiry concerning medical or social history from an adoptive parent of a minor adoptee or from an adoptee who is 18 years or older.

712B.15. Requirements for child protective proceeding if no consent is given; requirements for removal or foster care placement; demonstration of efforts to provide remedial and

rehabilitative programs; determination of serious emotional or physical damage to child; petition to invalidate

*** This amended section will come into effect May 30, 2016***

Sec. 15. (1) If an Indian child is the subject of a child protective proceeding under section 2(b) of chapter XIIA, including instances in which the parent executed a release under section 28 of chapter X during the pendency of that proceeding, or a guardianship proceeding under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, and if a parent does not provide consent as described in section 13 of this chapter, or a guardianship proceeding under section 19a or 19c of chapter XIIA, the following requirements must be met:

- (a) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter.
- (b) The proceeding shall be conducted in accordance with Michigan supreme court rules and subsections (2) to (4).
- (c) Section 25 of this chapter applies in a guardianship proceeding under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205.

(2) An Indian child may be removed from a parent or Indian custodian, placed into a foster care placement, or, for an Indian child already taken into protective custody, remain removed from a parent or Indian custodian pending further proceedings, only upon clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that the active efforts were unsuccessful, and 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 Indian child. The active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. The evidence must include the testimony of at least 1 qualified expert witness, who has knowledge of the child rearing practices of the Indian child's tribe, 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 Indian child.

(3) A party seeking a termination of parental rights to an Indian child under state law must demonstrate to the court's satisfaction that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that the active efforts were unsuccessful.

(4) No termination of parental rights may be ordered in a proceeding described in this section without a determination, supported by evidence beyond a reasonable doubt, including testimony of at least 1 qualified expert witness as described in section 17, 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 Indian child.

(5) Any Indian child who is the subject of any action for termination of parental rights under state law, any parent or Indian custodian from whose custody the Indian child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate the action upon a showing that the action violated any provision of this section.

712B.17. Preference of qualified expert witness; party may present rebuttal qualified expert witness

Sec. 17. (1) If the testimony of a qualified expert witness is required, the court shall accept either of the following in the following order of preference:

- (a) A member of the Indian child's tribe, or witness approved by the Indian child's tribe, who is recognized by the tribal community as knowledgeable in tribal customs and how the tribal customs pertain to family organization and child rearing practices.
- (b) A person with knowledge, skill, experience, training, or education and who can speak to the Indian child's tribe and its customs and how the tribal customs pertain to family organization and child rearing practices.

(2) A party to a child custody proceeding may present his or her own qualified expert witness to rebut the testimony of the petitioner's qualified expert witness.

712B.19. Determination of improper removal or retained custody

Sec. 19. If a court determines at a hearing that a petitioner in an Indian child custody proceeding 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 the petition and immediately return the child to his or her parent or Indian custodian unless returning the child to his or her parent or Indian custodian would subject the child to a substantial and immediate danger or threat of danger.

712B.21. Determination of indigency and appointment of counsel; appointment of guardian ad litem

Sec. 21. (1) In a case in which the court determines indigency, the parent or Indian custodian has the right to court-appointed counsel in a removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that the appointment is in the best interest of the child. If state law makes no provision for appointment of counsel in those proceedings, the court shall promptly notify the secretary upon appointment of counsel.

(2) If state law does not require the appointment of a lawyer-guardian ad litem for the child, the court may, in its discretion, appoint a lawyer-guardian ad litem for the child upon a finding that the appointment is in the best interest of the child.

712B.23. Placement in least restrictive setting and order of preference; preference of adoptive placement; burden of good cause not to follow order of preference; no finding of good cause without investigating all required possible placements; conditions; tribe's order

of preference; record of placement; prevailing social and cultural standards of tribe; removal when temporarily off the reservation; efforts to be documented and made available.

Sec. 23. (1) Except for a placement for guardianship under section 5204 or 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, where both parents submit a consent for the guardianship, an Indian child shall be placed in the least restrictive setting that most approximates a family and in which his or her special needs, if any, may be met. The child shall be placed within reasonable proximity to his or her home, taking into account any special needs of the child. Absent good cause to the contrary, the foster care or preadoptive placement of an Indian child must be in the following order of preference:

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

(2) Absent good cause to the contrary, the adoptive placement of an Indian child must be in the following order of preference:

- (a) A member of the child's extended family.
- (b) A member of the Indian child's tribe.
- (c) An Indian family.

(3) The burden of establishing good cause not to follow the order of preference is on the party requesting the deviation.

(4) The court shall not find good cause to deviate from the placement preferences stated in this section without first ensuring that all possible placements required under this section have been thoroughly investigated and eliminated. All efforts made under this section must be provided to the court in writing or stated on the record. The court shall address efforts to place an Indian child in accordance with this section at each hearing until the placement meets the requirements of this section.

(5) The court's determination of good cause to not follow the order of preference shall be based on 1 or more of the following conditions:

- (a) A request was made by a child of sufficient age.
- (b) A child has an extraordinary physical or emotional need as established by testimony of an expert witness.

(6) In the case of a placement under subsection (1) or (2), if the Indian child's tribe establishes a different order of preference, the department or court ordering the placement shall follow the tribe's order of preference.

(7) A record of each placement of an Indian child shall be maintained by the department or court evidencing the efforts to comply with the order of preference specified in this section. The record shall be made available at any time upon the request of the secretary or Indian child's tribe.

(8) The standards to be applied in meeting the placement preferences established in this section shall be the prevailing social and cultural standards of the Indian tribe or tribes in which the parent or extended family resides or maintains social and cultural ties.

(9) Nothing in this chapter or section prevents the emergency removal, protective custody, or subsequent placement of an Indian child who is a resident of or is domiciled on a reservation but is temporarily located off the reservation.

(10) All efforts made to identify, locate, and place a child according to this section shall be documented and, upon request, made available to the court, tribe, Indian child, Indian child's lawyer-guardian ad litem, parent, or Indian custodian.

712B.25. Investigation of involuntary petition for guardianship; notice of pending proceeding; execution of consent for voluntary placement; withdrawal of consent; termination of guardianship; notice of applicability of Indian child welfare act

*** This amended section will come into effect May 30, 2016***

Sec. 25. (1) If a petition for a guardianship is filed and is determined to be involuntary under section 15 of this chapter and the court knows or has reason to know that the child is an Indian child, the court may order the department or a court employee to conduct an investigation of the proposed guardianship and file a written report of the investigation. In addition to the information required in section 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204, the report must include, but is not limited to, the following information:

- (a) Whether the child is or is not an Indian child.
- (b) The identity and location of the Indian child's parents, if known.
- (c) If the child is an Indian child, the report must also address all of the following:
 - (i) The tribe or tribes of which the Indian child is a member or eligible for membership.
 - (ii) If the Indian child and family need culturally appropriate and other services to preserve the Indian family.
 - (iii) The identity and location of extended family members and if no extended family members can be found, what efforts were made to locate them.

(2) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act, and section 9 of this chapter. If the court knows or has reason to know that the proceeding involves an Indian child, the court shall conduct a hearing to determine all of the following:

- (a) If the tribe has exclusive jurisdiction. If so, the court shall issue an order terminating the guardianship or dismissing the petition.
 - (b) If the current placement with the guardian meets the placement requirements in section 23 of this chapter.
 - (c) If it is in the Indian child's best interest to order the guardianship.
 - (d) If a lawyer-guardian ad litem should be appointed to represent the Indian child.
- (3) If a petition for guardianship is filed and is to be accompanied by a consent to a voluntary placement of an Indian child, the consent must be executed in accordance with section 13 of this chapter. If the Indian child's parents do not execute a consent under section 13 of this chapter, the petition is considered to be for an involuntary guardianship and the requirements of section 15 of this chapter must be met.
- (4) A parent or Indian custodian who executes a consent under this section for the purpose of voluntary guardianship may withdraw his or her consent at any time by sending written notice to the court substantially in compliance on a form approved by the state court administrative office that the parent or Indian custodian revokes consent and wants his or her Indian child returned.
- (5) The voluntary guardianship is terminated when the court receives from a parent or Indian custodian notice to withdraw consent to the guardianship, and the Indian child shall be immediately returned to the parent or Indian custodian.
- (6) If the court discovers a child may be an Indian child after a guardianship is ordered, the court shall provide notice of the guardianship and the potential applicability of this chapter and the Indian child welfare act, in compliance with Michigan court rules, this chapter, and the Indian child welfare act, to the tribe, the parents or Indian custodian, and the current guardian on a form approved by the state court administrative office.

712B.27. Voluntary placement executed by both parents; court may order visitation; notice of pending proceeding; information of tribal affiliation, biological parents, and information to protect tribal relationship rights; withdrawal of consent; petition for return of custody.

Sec. 27. (1) If a release or consent to adoption under chapter X1 is executed, consent to voluntary placement of an Indian child must also be executed by both parents of the Indian child in accordance with section 13 of this chapter.

(2) At any time during an adoption proceeding, a court may order visitation between the Indian child and 1 or more members of the Indian child's tribe and extended family members.

(3) Notice of the pending proceeding must be given as prescribed by Michigan supreme court rule, the Indian child welfare act,³ and section 9 of this chapter.

(4) Upon application by an Indian individual who has reached the age of 18 and who was subject to adoptive placement, the court that entered the order of adoption shall inform the individual of his or her tribal affiliation, if known, of the individual's biological parents, and provide any information as necessary to protect any rights from the individual's tribal relationship.

(5) After the entry of a final order of adoption of an Indian child in any state court, the parent may withdraw consent on the grounds that consent was obtained through fraud or duress and may petition the court to vacate the final order of adoption. Upon a finding that the consent was obtained through fraud or duress, the court shall vacate the final order of adoption and return the child to the parent. No adoption that has been effective for at least 2 years may be invalidated under the provisions of this subsection unless otherwise permitted under state law.

(6) Notwithstanding state law to the contrary, whenever a final order of adoption of an Indian 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 the petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of the Indian child welfare act, 25 USC 1912, that the return of custody is not in the best interests of the child.

712B.29. Termination of placement with no longer necessary; initiation of custody proceeding when child located off reservation

Sec. 29. (1) If an Indian child is taken into custody under section 14 of chapter XIIA,¹ the subsequent placement shall terminate immediately when the removal and placement are no longer necessary to prevent imminent physical damage or harm to the child.

(2) If a child is taken into custody under section 14 of chapter XIIA and the child is under the exclusive jurisdiction of an Indian tribe or is domiciled on a reservation but temporarily located off the reservation, the court shall immediately initiate a child custody proceeding and do either of the following:

- (a) Transfer the child to the jurisdiction of the appropriate Indian tribe.
- (b) Return the child to the parent or Indian custodian.

712B.31. Authorization of state to enter into agreements with tribes; revocation of agreements.

Sec. 31. (1) The state is authorized to enter into agreements with tribes in this state regarding the care and custody of Indian children, funding of the care and custody of Indian children, and jurisdiction over child custody proceedings, including agreements that may provide for transfer of jurisdiction on a case-by-case basis and agreements that provide for concurrent jurisdiction between the state and Indian tribes.

(2) Unless the agreement provides otherwise, both of the following apply:

- (a) The agreements described in subsection (1) may be revoked by either party upon 180 days' written notice to the other party.
- (b) Revocation of an agreement does not affect any action or proceeding over which the court already has jurisdiction.

712B.33. Establishment of standards and procedures for department review of cases and compliance monitoring.

Sec. 33. The department, in consultation with Indian tribes in this state, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the Indian child welfare act and this chapter.

712B.35. Secretary and tribal enrollment officer to be provided with copy of final decree and other information; statement of identifying information of biological parents.

Sec. 35. (1) A Michigan court entering a final decree or order in any Indian child adoptive placement shall provide the secretary and the tribal enrollment officer of the appropriate tribe with a copy of the decree or order together with other information as may be necessary to show the following:

- (a) The name, date of birth, and tribal affiliation of the child.
- (b) The names and addresses of the biological parents, if known.
- (c) The names and addresses of the adoptive parents.
- (d) The identity of any agency having files or information relating to the adoptive placement.

(2) If court records contain a statement of identifying information of the biological parent or parents that their identity remains confidential, the court shall include the statement of identifying information with the other information sent to the secretary and the tribal enrollment officer of the appropriate Indian tribe described in subsection (1).

712B.37. Publication of annual census of Indian children in department care.

Sec. 37. The department shall publish annually a census with no individually identifiable information of all Indian children in the department's care and custody. The census shall include, by county and statewide, information regarding the Indian children on all of the following:

- (a) Legal status.
- (b) Placement information and whether it complies with this chapter.
- (c) Age.
- (d) Sex.
- (e) Tribe in which the child is a member or eligible for membership.
- (f) Accumulated length of time in foster care.
- (g) Other demographic information considered appropriate concerning all Indian children who are the subject of child custody proceedings.

712B.39. Petition to invalidation action upon showing of violation of provisions.

Sec. 39. Any Indian child who is the subject of an action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody an Indian child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate the action upon a showing that the action violated any provision of sections 7, 9, 11, 13, 15, 21, 23, 25, 27, and 29 of this chapter.

712B.41. Severability

Sec. 41. If any provision of this chapter or its application to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this chapter that can be given effect without the invalid provision or application. For this purpose, the provisions of this chapter are severable.

Appendix B: The Indian Child Welfare Act

25 USC 1901 - 1963

UNITED STATES CODE TITLE 25
- INDIANS CHAPTER 21 -
INDIAN CHILD WELFARE

CHAPTER 21 - INDIAN CHILD WELFARE

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§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds -

- (1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power to regulate commerce with Indian tribes and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
- (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
- (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that 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;
- (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
- (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term -

- (1) "child custody proceeding" shall mean and include - (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated; (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship; (iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. 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 an award, in a divorce proceeding, of custody to one of the parents.

- (2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
- (3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;
- (4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
- (5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;
- (6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;
- (7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians; (8) "Indian tribe" means 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 section 1602(c) of title 43;
- (8) "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;
- (9) "Reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either 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;
- (10) "Secretary" means the Secretary of the Interior; and
- (11) "Tribal court" means a court with jurisdiction over child custody proceedings and which 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 which is vested with authority over child custody proceedings.

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

- (a) Exclusive jurisdiction. An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding 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 shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.
- (b) Transfer of proceedings; declination by tribal court. In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, that such transfer shall be subject to declination by the tribal court of such tribe.
- (c) State court proceedings; intervention. In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.
- (d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes. The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

§ 1912. Pending court proceedings

- (a) Notice; time for commencement of proceedings; additional time for preparation. In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian 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 and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. 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: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.
- (b) Appointment of counsel. In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the

- Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.
- (c) Examination of reports or other documents. Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.
 - (d) Remedial services and rehabilitative programs; preventive measures. Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State 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 Indian family and that these efforts have proved unsuccessful.
 - (e) Foster care placement orders; evidence; determination of damage to child. 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.
 - (f) Parental rights termination orders; evidence; determination of damage to child. No termination of parental rights may be ordered in such proceeding 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 is likely to result in serious emotional or physical damage to the child.

§ 1913. Parental rights; voluntary termination

- (a) Consent; record; certification matters; invalid consents. Where any parent or Indian custodian 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 into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.
- (b) Foster care placement; withdrawal of consent. Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.
- (c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody. In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.
- (d) Collateral attack; vacation of decree and return of custody; limitations. After the entry of a final decree of adoption of an Indian child in any 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 under State law.

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

§ 1915. Placement of Indian children

- (a) Adoptive placements; preferences. In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.
- (b) Foster care or preadoptive placements; criteria; preferences. 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 special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with –
 - a. (i) a member of the Indian child's extended family;
 - b. (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
 - c. (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
 - d. (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
- (c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences. In the case of a placement under subsection (a) or (b) of this section, if the Indian 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 subsection (b) of this section. Where appropriate, the preference of the Indian 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.
- (d) Social and cultural standards applicable. 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 resides or with which the parent or extended family members maintain social and cultural ties.
- (e) Record of placement; availability. A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, 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 Secretary or the Indian child's tribe.

§ 1916. Return of custody

- (a) Petition; best interests of child. Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian 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 1912 of this title, that such return of custody is not in the best interests of the child.
- (b) Removal from foster care home; placement procedure. Whenever an Indian 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 chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

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.

§ 1918. Reassumption of jurisdiction over child custody proceedings

- (a) Petition; suitable plan; approval by Secretary. Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.
- (b) Criteria applicable to consideration by Secretary; partial retrocession:
 - (a) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things: (i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe; (ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe; (iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and (iv) the feasibility of the plan in cases of multiracial occupation of a single reservation or geographic area.
 - (b) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided

in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

- (c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval. If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.
- (d) Pending actions or proceedings unaffected. Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

§ 1919. Agreements between States and Indian tribes

- (a) Subject coverage. States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.
- (b) Revocation; notice; actions or proceedings unaffected. Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding 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 his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

§ 1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his 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 or 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 subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

§ 1923. Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law 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 November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

§ 1931. Grants for on or near reservation programs and child welfare codes

- (a) Statement of purpose; scope of programs. The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to –
 - (1) a system for licensing or otherwise regulating Indian foster and adoptive homes;
 - (2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
 - (3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;
 - (4) home improvement programs;
 - (5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;
 - (6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;
 - (7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and
 - (8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.
- (b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval

for qualification for assistance under federally assisted program. Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act (42 U.S.C. 620 et seq., 1397 et seq.) or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

§ 1932. Grants for off-reservation programs for additional services

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to –

- (1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;
- (2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;
- (3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and
- (4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

§ 1933. Funds for on and off reservation programs

- (a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.
- (b) Appropriation authorization under section 13 of this title Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title.

§ 1934. "Indian" defined for certain purposes

For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.

§ 1951. Information availability to and disclosure by Secretary

- (a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act: Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show: (1) the name and tribal affiliation of the child; (2) the names and addresses of the biological parents; (3) the names and addresses of the adoptive parents; and (4) the identity of any agency having files or information relating to such adoptive placement. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.
- (b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment. Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

§ 1952. Rules and regulations

Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter.

§ 1961. Locally convenient day schools

- (a) Sense of Congress. It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.
- (b) Report to Congress; contents, etc. The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

§ 1962. Copies to the States

Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

§ 1963. Severability

If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

Appendix C: Indian Child Welfare Act Final Rule

25 CFR 23

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| Section | Respondent | Information collection | Annual number of respondents | Frequency of responses | Annual number of responses | Completion time per response | Total annual burden hours |
|--------------|------------------------------|---------------------------------------|------------------------------|------------------------|----------------------------|------------------------------|---------------------------|
| 23.141 | State court or State agency. | Notify where records maintained | 50 | 167 | 8,350 | 0.5 | 4,175 |
| | | | | | 98,069 | | 301,811 |

The annual cost burden to respondents associated with providing notice by certified mail is \$6.74 and the cost of a return receipt green card is \$2.80. For each Indian child-custody proceeding, at least two notices must be sent—one to the parent and one to the Tribe, totaling \$19.08. At an annual estimated 13,000 child welfare proceedings that may involve an “Indian child,” where approximately 650 of these include an interstate transfer (13,650), this totals: \$260,442. In addition, there are approximately 2,578 voluntary proceedings for which parties may choose to provide notice, at a cost of \$49,118. Together, the total cost burden is \$309,630.

Comment was taken on this information collection in the proposed rule, as part of the public notice and comment period proposed rule, in compliance with OMB regulations. One commenter, the California Health and Human Services Agency, Department of Social Services (CHHS) submitted comments specifically in response to the request for comments on the information collection burden.

• *Comment on Proposed § 23.111:* The proposed rule states that notice must be by registered mail, whereas the current 23.11(a) allows for notice by certified mail. To require registered mail will increase costs that undermine noticing under ICWA. *Response:* The statute specifies “registered mail with return receipt requested.” 25 U.S.C. 1912(a). In response to these comments, the Department examined whether certified mail with return receipt requested is allowable under the statute, and determined that it is because certified mail with return receipt requested better meets the goals of prompt, documented notice. The final rule allows for certified mail.

• *Comment on Proposed § 23.104, providing information on how to contact a Tribe:* The rule should clarify BIA’s obligation in gathering the information for the list of Tribe’s designated agents and contact information because the current list is outdated, inefficient, and inconsistently maintained. The list is hampered by publication in the **Federal Register** and BIA should be required to publish updates on the Web. The list

also no longer maintains the historical affiliations, which was helpful.

Response: BIA is now publishing the list using historical affiliations, as requested, and making the list available on its Web site, where it can be updated more frequently. The rule does not address this because these are procedures internal to the BIA.

• *Comment on Proposed § 23.111(i), requiring notice by both States where child is transferred interstate:* Requiring both the originating State court and receiving State court to provide notice is duplicative and burdensome because notice should only be required in the State where the actual court proceeding is pending. Another commenter stated that the provision appears to apply to transfers between Tribes and States, where notice is unnecessary. *Response:* The final rule deletes this provision.

• *Comment on Proposed § 23.134, requiring BIA to disclose information to adult adoptees:* This section appears to be creating duplicative work of the BIA and States, because both sections require each to provide adult adoptees information for Tribal enrollment. *Response:* The Act imposes this responsibility on both BIA and the State. Section 1951(b) of the Act imposes the responsibility on BIA, which is in § 23.71(b) of the final rule. Section 1917 of the Act imposes the responsibility on States, which is addressed at § 23.134 of the final rule.

• *Comment on Proposed § 23.137, requiring the State to establish a single location for placement records:* This requirement would be an unfunded mandate with undue burden and would require relocating 1,145 files to a different location and require changes to existing recordkeeping systems. Another State agency commented that there is a significant fiscal and annual burden due to the staffing, costs for copying, packaging and transferring physical files to a different location. *Response:* The final rule deletes the provision requiring States to establish a single, central repository. The associated information collection request has also been deleted.

• *Comment on Proposed § 23.137, requiring providing records to the Department or Tribe upon request:* The 15-minute burden estimate allocated to

this task is too low. The time to copy, package and mail the documents will be no less than one hour, but more realistically two hours. *Response:* The final rule updates the burden estimates to reflect 1.5 hours.

If you have comments on this information collection, please submit them to Elizabeth K. Appel, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS–3071, Washington, DC 20240, or by email to elizabeth.appel@bia.gov.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature. *See*, 43 CFR 46.210(i). No extraordinary circumstances exist that would require greater review under the National Environmental Policy Act.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 25 CFR Part 23

Administrative practice and procedure, Child welfare, Indians, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 23 in Title 25 of the Code of Federal Regulations as follows:

PART 23—INDIAN CHILD WELFARE ACT

■ 1. The authority citation for part 23 continues to read as follows: 5 U.S.C. 301; 25 U.S.C. 2, 9, 1901–1952.

■ 2. In § 23.2:

■ a. Add a definition for “active efforts” in alphabetical order;

■ b. Revise the definition of “child-custody proceeding”;

■ c. Add definitions for “continued custody”, “custody”, and “domicile” in alphabetical order;

- d. Add a definition for “emergency proceeding” in alphabetical order;
- e. Revise the definition of “extended family member”;
- f. Add a definition for “hearing” in alphabetical order;
- g. Revise the definitions of “Indian child”, “Indian child’s Tribe”, and “Indian custodian”;
- h. Add a definition for “Indian foster home” in alphabetical order;
- i. Add a definition of “involuntary proceeding” in alphabetical order;
- j. Revise the definition of “parent”;
- k. Revise the definitions of “reservation” and “Secretary”;
- l. Add a definition for “status offenses” in alphabetical order;
- m. Revise the definition of “Tribal court”;
- n. Add definitions for “upon demand”, and “voluntary proceeding” in alphabetical order.

The additions and revisions read as follows:

§ 23.2 Definitions.

* * * * *

Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe and should be conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child’s family, with a focus on safe reunification as the most desirable goal;
- (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- (3) Identifying, notifying, and inviting representatives of the Indian child’s Tribe to participate in providing support and services to the Indian child’s family and in family team meetings, permanency planning, and resolution of placement issues;
- (4) Conducting or causing to be conducted a diligent search for the

Indian child’s extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child’s parents;

(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child’s Tribe;

(6) Taking steps to keep siblings together whenever possible;

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child’s parents or, when appropriate, the child’s family, in utilizing and accessing those resources;

(9) Monitoring progress and participation in services;

(10) Considering alternative ways to address the needs of the Indian child’s parents and, where appropriate, the family, if the optimum services do not exist or are not available;

(11) Providing post-reunification services and monitoring.

* * * * *

Child-custody proceeding. (1) “Child-custody proceeding” means and includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes:

(i) *Foster-care placement*, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) *Termination of parental rights*, which is any action resulting in the termination of the parent-child relationship;

(iii) *Preadoptive placement*, which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(iv) *Adoptive placement*, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(2) An action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes. There may be several child-custody proceedings involving any given Indian child. Within each child-custody proceeding, there may be several hearings. If a child is placed in foster care or another out-of-home placement as a result of a status offense, that status offense proceeding is a child-custody proceeding.

* * * * *

Continued custody means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law, that a parent or Indian custodian already has or had at any point in the past. The biological mother of a child has had custody of a child.

Custody means 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.

Domicile means:

(1) For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.

(2) For an Indian child, the domicile of the Indian child’s parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child’s custodial parent.

Emergency proceeding means and includes any court action that involves an emergency removal or emergency placement of an Indian child.

Extended family member is defined by the law or custom of the Indian child’s Tribe or, in the absence of such law or custom, is a person who has reached age 18 and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

* * * * *

Hearing means a judicial session held for the purpose of deciding issues of fact, of law, or both.

* * * * *

Indian child means any unmarried person who is under age 18 and either:

- (1) Is a member or citizen of an Indian Tribe; or
- (2) Is eligible for membership or citizenship in an Indian Tribe and is the

biological child of a member/citizen of an Indian Tribe.

Indian child's Tribe means:

(1) The Indian Tribe in which an Indian child is a member or eligible for membership; or

(2) In the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe described in § 23.109.

Indian custodian means any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.

Indian foster home means a foster home where one or more of the licensed or approved foster parents is an "Indian" as defined in 25 U.S.C. 1903(3).

Involuntary proceeding means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster-care, preadoptive, or adoptive placement under threat of removal of the child by a State court or agency.

Parent or parents means any biological parent or parents of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under Tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established.

Reservation means Indian country as defined in 18 U.S.C. 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.

Secretary means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

Status offenses mean 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).

Tribal court means a court with jurisdiction over child-custody proceedings and which 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 vested with authority over child-custody proceedings.

Upon demand means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.

Voluntary proceeding means a child-custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that 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, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

■ 3. Revise § 23.11 to read as follows:

§ 23.11 Notice.

(a) In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Notice must include the requisite information identified in § 23.111, consistent with the confidentiality requirement in § 23.111(d)(6)(ix). Copies of these notices must be sent to the appropriate Regional Director listed in paragraphs (b)(1) through (12) of this section by registered or certified mail with return receipt requested or by personal delivery and must include the information required by § 23.111.

(b)(1) For child-custody proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, or any territory or possession of the United States, notices must be sent to the following address: Eastern Regional Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214.

(2) For child-custody proceedings in Illinois, Indiana, Iowa, Michigan,

Minnesota, Ohio, or Wisconsin, notices must be sent to the following address: Minneapolis Regional Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401-2241.

(3) For child-custody proceedings in Nebraska, North Dakota, or South Dakota, notices must be sent to the following address: Aberdeen Regional Director, Bureau of Indian Affairs, 115 Fourth Avenue SE., Aberdeen, South Dakota 57401.

(4) For child-custody proceedings in Kansas, Texas (except for notices to the Ysleta del Sur Pueblo of El Paso County, Texas), or the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods or Woodward, notices must be sent to the following address: Anadarko Regional Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. Notices to the Ysleta del Sur Pueblo must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6) of this section.

(5) For child-custody proceedings in Wyoming or Montana (except for notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana), notices must be sent to the following address: Billings Regional Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101. Notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(6) For child-custody proceedings in the Texas counties of El Paso and Hudspeth or in Colorado or New Mexico (exclusive of notices to the Navajo Nation from the New Mexico counties listed in paragraph (b)(9) of this section), notices must be sent to the following address: Albuquerque Regional Director, Bureau of Indian Affairs, 615 First Street, P.O. Box 26567, Albuquerque, New Mexico 87125. Notices to the Navajo Nation must be sent to the Navajo Regional Director at the address listed in paragraph (b)(9) of this section.

(7) For child-custody proceedings in Alaska (except for notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska), notices must be sent to the following address: Juneau Regional Director, Bureau of Indian

Affairs, 709 West 9th Street, Juneau, Alaska 99802–1219. Notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(8) For child-custody proceedings in Arkansas, Missouri, or the eastern Oklahoma counties of Adair, Atoka, Bryan, Carter, Cherokee, Craig, Creek, Choctaw, Coal, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnson, Latimer, LeFlore, Love, Mayes, McCurtain, McClain, McIntosh, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pittsburg, Pontotoc, Pushmataha, Marshall, Rogers, Seminole, Sequoyah, Stephens, Tulsa, Wagoner, or Washington, notices must be sent to the following address: Muskogee Regional Director, Bureau of Indian Affairs, 101 North Fifth Street, Muskogee, Oklahoma 74401.

(9) For child-custody proceedings in the Arizona counties of Apache, Coconino (except for notices to the Hopi Tribe of Arizona and the San Juan Southern Paiute Tribe of Arizona) or Navajo (except for notices to the Hopi Tribe of Arizona); the New Mexico counties of McKinley (except for notices to the Zuni Tribe of the Zuni Reservation), San Juan, or Socorro; or the Utah county of San Juan, notices must be sent to the following address: Navajo Regional Director, Bureau of Indian Affairs, P.O. Box 1060, Gallup, New Mexico 87301. Notices to the Hopi and San Juan Southern Paiute Tribes of Arizona must be sent to the Phoenix Regional Director at the address listed in paragraph (b)(10) of this section. Notices to the Zuni Tribe of the Zuni Reservation must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6) of this section.

(10) For child-custody proceedings in Arizona (exclusive of notices to the Navajo Nation from those counties listed in paragraph (b)(9) of this section), Nevada, or Utah (exclusive of San Juan County), notices must be sent to the following address: Phoenix Regional Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001.

(11) For child-custody proceedings in Idaho, Oregon, or Washington, notices must be sent to the following address: Portland Regional Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232. All notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, located in the Montana counties of Flathead, Lake, Missoula, and Sanders,

must also be sent to the Portland Regional Director.

(12) For child-custody proceedings in California or Hawaii, notices must be sent to the following address: Sacramento Regional Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

(c) Upon receipt of the notice, the Secretary will make reasonable documented efforts to locate and notify the child's Tribe and the child's parent or Indian custodian. The Secretary will have 15 days, after receipt of the notice, to notify the child's Tribe and parents or Indian custodians and to send a copy of the notice to the court. If within the 15-day period the Secretary is unable to verify that the child meets the criteria of an Indian child as defined in § 23.2, or is unable to locate the parents or Indian custodians, the Secretary will so inform the court and state how much more time, if any, will be needed to complete the verification or the search. The Secretary will complete all research efforts, even if those efforts cannot be completed before the child-custody proceeding begins.

(d) Upon request from a party to an Indian child-custody proceeding, the Secretary will make a reasonable attempt to identify and locate the child's Tribe, parents, or Indian custodians to assist the party seeking the information.

■ 4. Revise § 23.71 to read as follows:

§ 23.71 Recordkeeping and information availability.

(a) The Division of Human Services, Bureau of Indian Affairs (BIA), is authorized to receive all information and to maintain a central file on all State Indian adoptions. This file is confidential and only designated persons may have access to it.

(b) Upon the request of an adopted Indian who has reached age 18, the adoptive or foster parents of an Indian child, or an Indian Tribe, BIA will disclose such information as may be necessary for purposes of Tribal enrollment or determining any rights or benefits associated with Tribal membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, BIA must certify to the Indian child's Tribe, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment under the criteria established by such Tribe.

(c) BIA will ensure that the confidentiality of this information is maintained and that the information is not subject to the Freedom of

Information Act, 5 U.S.C. 552, as amended.

■ 5. Add subpart I to read as follows:

Subpart I—Indian Child Welfare Act Proceedings

General Provisions

Sec.

- 23.101 What is the purpose of this subpart?
- 23.102 What terms do I need to know?
- 23.103 When does ICWA apply?
- 23.104 What provisions of this subpart apply to each type of child-custody proceeding?
- 23.105 How do I contact a Tribe under the regulations in this subpart?
- 23.106 How does this subpart interact with State and Federal laws?

Petrial Requirements

- 23.107 How should a State court determine if there is reason to know the child is an Indian child?
- 23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?
- 23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?
- 23.110 When must a State court dismiss an action?
- 23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?
- 23.112 What time limits and extensions apply?
- 23.113 What are the standards for emergency proceedings involving an Indian child?
- 23.114 What are the requirements for determining improper removal?

Petitions To Transfer to Tribal Court

- 23.115 How are petitions for transfer of a proceeding made?
- 23.116 What happens after a petition for transfer is made?
- 23.117 What are the criteria for ruling on transfer petitions?
- 23.118 How is a determination of "good cause" to deny transfer made?
- 23.119 What happens after a petition for transfer is granted?

Adjudication of Involuntary Proceedings

- 23.120 How does the State court ensure that active efforts have been made?
- 23.121 What are the applicable standards of evidence?
- 23.122 Who may serve as a qualified expert witness?
- 23.123 [Reserved]

Voluntary Proceedings

- 23.124 What actions must a State court undertake in voluntary proceedings?
- 23.125 How is consent obtained?
- 23.126 What information must a consent document contain?
- 23.127 How is withdrawal of consent to a foster-care placement achieved?

- 23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?

Dispositions

- 23.129 When do the placement preferences apply?
- 23.130 What placement preferences apply in adoptive placements?
- 23.131 What placement preferences apply in foster-care or preadoptive placements?
- 23.132 How is a determination of "good cause" to depart from the placement preferences made?

Access

- 23.133 Should courts allow participation by alternative methods?
- 23.134 Who has access to reports and records during a proceeding?
- 23.135 [Reserved]

Post-Trial Rights & Responsibilities

- 23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?
- 23.137 Who can petition to invalidate an action for certain ICWA violations?
- 23.138 What are the rights to information about adoptees' Tribal affiliations?
- 23.139 Must notice be given of a change in an adopted Indian child's status?

Recordkeeping

- 23.140 What information must States furnish to the Bureau of Indian Affairs?
- 23.141 What records must the State maintain?
- 23.142 How does the Paperwork Reduction Act affect this subpart?

Effective Date

- 23.143 How does this subpart apply to pending proceedings?

Severability

- 23.144 What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?

Subpart I—Indian Child Welfare Act Proceedings

General Provisions

§ 23.101 What is the purpose of this subpart?

The regulations in this subpart clarify the minimum Federal standards governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act's express language, Congress's intent in enacting the statute, and to promote the stability and security of Indian tribes and families.

§ 23.102 What terms do I need to know?

The following terms and their definitions apply to this subpart. All other terms have the meanings assigned in § 23.2.

Agency means a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements.

Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a Tribe, or a majority of whose members are Indians.

§ 23.103 When does ICWA apply?

(a) ICWA includes requirements that apply whenever an Indian child is the subject of:

- (1) A child-custody proceeding, including:
 - (i) An involuntary proceeding;
 - (ii) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand; and
 - (iii) A proceeding involving status offenses if any part of the proceeding results in the need for out-of-home

placement of the child, including a foster-care, preadoptive, or adoptive placement, or termination of parental rights.

(2) An emergency proceeding.

(b) ICWA does not apply to:

- (1) A Tribal court proceeding;
- (2) A proceeding regarding a criminal act that is not a status offense;
- (3) An award of custody of the Indian child to one of the parents including, but not limited to, an award in a divorce proceeding; or
- (4) A voluntary placement that 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.

(c) If a proceeding listed in paragraph (a) of this section concerns a child who meets the statutory definition of "Indian child," then ICWA will apply to that proceeding. In determining whether ICWA applies to a proceeding, the State court may not consider factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child's blood quantum.

(d) If ICWA applies at the commencement of a proceeding, it will not cease to apply simply because the child reaches age 18 during the pendency of the proceeding.

§ 23.104 What provisions of this subpart apply to each type of child-custody proceeding?

The following table lists what sections of this subpart apply to each type of child-custody proceeding identified in § 23.103(a):

| Section | Type of proceeding |
|---|--|
| 23.101–23.106 (General Provisions) | Emergency, Involuntary, Voluntary. |
| <i>Pretrial Requirements:</i> | |
| 23.107 (How should a State court determine if there is reason to know the child is an Indian child?) | Emergency, Involuntary, Voluntary. |
| 23.108 (Who makes the determination as to whether a child is a member whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?) | Emergency, Involuntary, Voluntary. |
| 23.109 (How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?) | Emergency, Involuntary, Voluntary. |
| 23.110 (When must a State court dismiss an action?) | Involuntary, Voluntary. |
| 23.111 (What are the notice requirements for a child-custody proceeding involving an Indian child?) | Involuntary (foster-care placement and termination of parental rights). |
| 23.112 (What time limits and extensions apply?) | Involuntary (foster-care placement and termination of parental rights). |
| 23.113 (What are the standards for emergency proceedings involving an Indian child?) | Emergency. |
| 23.114 (What are the requirements for determining improper removal?) | Involuntary. |
| <i>Petitions to Transfer to Tribal Court:</i> | |
| 23.115 (How are petitions for transfer of a proceeding made?) | Involuntary, Voluntary (foster-care placement and termination of parental rights). |

| Section | Type of proceeding |
|--|--|
| 23.116 (What happens after a petition for transfer is made?) | Involuntary, Voluntary (foster-care placement and termination of parental rights). |
| 23.117 (What are the criteria for ruling on transfer petitions?) | Involuntary, Voluntary (foster-care placement and termination of parental rights). |
| 23.118 (How is a determination of "good cause" to deny transfer made?) | Involuntary, Voluntary (foster-care placement and termination of parental rights). |
| 23.119 (What happens after a petition for transfer is granted?) | Involuntary, Voluntary (foster-care placement and termination of parental rights). |
| <i>Adjudication of Involuntary Proceedings:</i> | |
| 23.120 (How does the State court ensure that active efforts have been made?) | Involuntary (foster-care placement and termination of parental rights). |
| 23.121 (What are the applicable standards of evidence?) | Involuntary (foster-care placement and termination of parental rights). |
| 23.122 (Who may serve as a qualified expert witness?) | Involuntary (foster-care placement and termination of parental rights). |
| 23.123 Reserved | N/A. |
| <i>Voluntary Proceedings:</i> | |
| 23.124 (What actions must a State court undertake in voluntary proceedings?) | Voluntary. |
| 23.125 (How is consent obtained?) | Voluntary. |
| 23.126 (What information must a consent document contain?) | Voluntary. |
| 23.127 (How is withdrawal of consent to a foster-care placement achieved?) | Voluntary. |
| 23.128 (How is withdrawal of consent to a termination of parental rights or adoption achieved?) | Voluntary. |
| <i>Dispositions:</i> | |
| 23.129 (When do the placement preferences apply?) | Involuntary, Voluntary. |
| 23.130 (What placement preferences apply in adoptive placements?) | Involuntary, Voluntary. |
| 23.131 (What placement preferences apply in foster-care or preadoptive placements?) | Involuntary, Voluntary. |
| 23.132 (How is a determination of "good cause" to depart from the placement preferences made?) | Involuntary, Voluntary. |
| <i>Access:</i> | |
| 23.133 (Should courts allow participation by alternative methods?) | Emergency, Involuntary. |
| 23.134 (Who has access to reports and records during a proceeding?) | Emergency, Involuntary. |
| 23.135 Reserved. | N/A. |
| <i>Post-Trial Rights & Responsibilities:</i> | |
| 23.136 (What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?) | Involuntary (if consent given under threat of removal), voluntary. |
| 23.137 (Who can petition to invalidate an action for certain ICWA violations?) | Emergency (to extent it involved a specified violation), involuntary, voluntary. |
| 23.138 (What are the rights to information about adoptees' Tribal affiliations?) | Emergency, Involuntary, Voluntary. |
| 23.139 (Must notice be given of a change in an adopted Indian child's status?) | Involuntary, Voluntary. |
| <i>Recordkeeping:</i> | |
| 23.140 (What information must States furnish to the Bureau of Indian Affairs?) | Involuntary, Voluntary. |
| 23.141 (What records must the State maintain?) | Involuntary, Voluntary. |
| 23.142 (How does the Paperwork Reduction Act affect this subpart?) | Emergency, Involuntary, Voluntary. |
| <i>Effective Date:</i> | |
| 23.143 (How does this subpart apply to pending proceedings?) | Emergency, Involuntary, Voluntary. |
| <i>Severability:</i> | |
| 23.144 (What happens if some portion of part is held to be invalid by a court of competent jurisdiction?) | Emergency, Involuntary, Voluntary. |

Note: For purposes of this table, status-offense child-custody proceedings are included as a type of involuntary proceeding.

§ 23.105 How do I contact a Tribe under the regulations in this subpart?

To contact a Tribe to provide notice or obtain information or verification under the regulations in this subpart, you should direct the notice or inquiry as follows:

(a) Many Tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of Tribes' designated Tribal agents for service of ICWA notice in the **Federal Register** each year and makes the list available on its Web site at www.bia.gov.

(b) For a Tribe without a designated Tribal agent for service of ICWA notice, contact the Tribe to be directed to the appropriate office or individual.

(c) If you do not have accurate contact information for a Tribe, or the Tribe

contacted fails to respond to written inquiries, you should seek assistance in contacting the Indian Tribe from the BIA local or regional office or the BIA's Central Office in Washington, DC (see www.bia.gov).

§ 23.106 How does this subpart interact with State and Federal laws?

(a) The regulations in this subpart provide minimum Federal standards to ensure compliance with ICWA.

(b) Under section 1921 of ICWA, where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires the State or Federal court to apply the higher State or Federal standard.

Pretrial Requirements

§ 23.107 How should a State court determine if there is reason to know the child is an Indian child?

(a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(b) If there is reason to know the child is an Indian child, but the court does

not have sufficient evidence to determine that the child is or is not an "Indian child," the court must:

(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and

(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child" in this part.

(c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(5) The court is informed that the child is or has been a ward of a Tribal court; or

(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

(d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an "Indian child." A Tribe receiving information related to this inquiry must keep documents and information confidential.

§ 23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?

(a) The Indian Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) determines whether the child is a member of the Tribe, or whether the child is eligible for membership in the Tribe and a biological parent of the child is a member of the Tribe, except as otherwise provided by Federal or Tribal law.

(b) The determination by a Tribe of whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member, is solely within the jurisdiction and authority of the Tribe, except as otherwise provided by Federal or Tribal law. The State court may not substitute its own determination regarding a child's membership in a Tribe, a child's eligibility for membership in a Tribe, or a parent's membership in a Tribe.

(c) The State court may rely on facts or documentation indicating a Tribal determination of membership or eligibility for membership in making a judicial determination as to whether the child is an "Indian child." An example of documentation indicating membership is a document issued by the Tribe, such as Tribal enrollment documentation.

§ 23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?

(a) If the Indian child is a member or eligible for membership in only one Tribe, that Tribe must be designated as the Indian child's Tribe.

(b) If the Indian child meets the definition of "Indian child" through more than one Tribe, deference should be given to the Tribe in which the Indian child is already a member, unless otherwise agreed to by the Tribes.

(c) If an Indian child meets the definition of "Indian child" through more than one Tribe because the child is a member in more than one Tribe or the child is not a member of but is eligible for membership in more than one Tribe, the court must provide the opportunity in any involuntary child-custody proceeding for the Tribes to determine which should be designated as the Indian child's Tribe.

(1) If the Tribes are able to reach an agreement, the agreed-upon Tribe should be designated as the Indian child's Tribe.

(2) If the Tribes are unable to reach an agreement, the State court designates,

for the purposes of ICWA, the Indian Tribe with which the Indian child has the more significant contacts as the Indian child's Tribe, taking into consideration:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each Tribe;

(iii) Tribal membership of the child's custodial parent or Indian custodian; and

(iv) Interest asserted by each Tribe in the child-custody proceeding;

(v) Whether there has been a previous adjudication with respect to the child by a court of one of the Tribes; and

(vi) Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.

(3) A determination of the Indian child's Tribe for purposes of ICWA and the regulations in this subpart do not constitute a determination for any other purpose.

§ 23.110 When must a State court dismiss an action?

Subject to 25 U.S.C. 1919 (Agreements between States and Indian Tribes) and § 23.113 (emergency proceedings), the following limitations on a State court's jurisdiction apply:

(a) The court in any voluntary or involuntary child-custody proceeding involving an Indian child must determine the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the Tribe exercises exclusive jurisdiction over child-custody proceedings, the State court must expeditiously notify the Tribal court of the pending dismissal based on the Tribe's exclusive jurisdiction, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

(b) If the child is a ward of a Tribal court, the State court must expeditiously notify the Tribal court of the pending dismissal, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

§ 23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?

(a) When a court knows or has reason to know that the subject of an involuntary foster-care-placement or

termination-of-parental-rights proceeding is an Indian child, the court must ensure that:

(1) The party seeking placement promptly sends notice of each such child-custody proceeding (including, but not limited to, any foster-care placement or any termination of parental or custodial rights) in accordance with this section; and

(2) An original or a copy of each notice sent under this section is filed with the court together with any return receipts or other proof of service.

(b) Notice must be sent to:

(1) Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member) (*see* § 23.115 for information on how to contact a Tribe);

(2) The child's parents; and

(3) If applicable, the child's Indian custodian.

(c) Notice must be sent by registered or certified mail with return receipt requested. Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.

(d) Notice must be in clear and understandable language and include the following:

(1) The child's name, birthdate, and birthplace;

(2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;

(3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;

(4) The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);

(5) A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;

(6) Statements setting out:

(i) The name of the petitioner and the name and address of petitioner's attorney;

(ii) The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, to intervene in the proceedings.

(iii) The Indian Tribe's right to intervene at any time in a State-court proceeding for the foster-care placement or termination of parental rights to an Indian child.

(iv) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel.

(v) The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.

(vi) The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of-parental-rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and § 23.115.

(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.

(viii) The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.

(ix) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.

(e) If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (*see* www.bia.gov). To establish Tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided. The Bureau of Indian Affairs will not make a determination of Tribal membership but may, in some instances, be able to identify Tribes to contact.

(f) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal laws. To secure such translation or interpretation support, a court may contact or direct a party to contact the Indian child's Tribe or the local BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.

(g) If a parent or Indian custodian of an Indian child appears in court without an attorney, the court must inform him or her of his or her rights, including any

applicable right to appointed counsel, right to request that the child-custody proceeding be transferred to Tribal court, right to object to such transfer, right to request additional time to prepare for the child-custody proceeding as provided in § 23.112, and right (if the parent or Indian custodian is not already a party) to intervene in the child-custody proceedings.

§ 23.112 What time limits and extensions apply?

(a) No foster-care-placement or termination-of-parental-rights proceeding may be held until at least 10 days after receipt of the notice by the parent (or Indian custodian) and by the Tribe (or the Secretary). The parent, Indian custodian, and Tribe each have a right, upon request, to be granted up to 20 additional days from the date upon which notice was received to prepare for participation in the proceeding.

(b) Except as provided in 25 U.S.C. 1922 and § 23.113, no child-custody proceeding for foster-care placement or termination of parental rights may be held until the waiting periods to which the parents or Indian custodians and to which the Indian child's Tribe are entitled have expired, as follows:

(1) 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;

(2) 10 days after the Indian child's Tribe (or the Secretary if the Indian child's Tribe is unknown to the party seeking placement) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;

(3) Up to 30 days after the parent or Indian custodian has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the parent or Indian custodian has requested up to 20 additional days to prepare for the child-custody proceeding as provided in 25 U.S.C. 1912(a) and § 23.111; and

(4) Up to 30 days after the Indian child's Tribe has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the Indian child's Tribe has requested up to 20 additional days to prepare for the child-custody proceeding.

(c) Additional time beyond the minimum required by 25 U.S.C. 1912 and § 23.111 may also be available under State law or pursuant to extensions granted by the court.

§ 23.113 What are the standards for emergency proceedings involving an Indian child?

(a) Any emergency removal or placement of an Indian child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(b) The State court must:

(1) Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended; and

(3) At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) Immediately terminate (or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(c) An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child-custody proceeding subject to the provisions of ICWA;

(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or

(3) Restoring the child to the parent or Indian custodian.

(d) A petition for a court order authorizing the emergency removal or continued emergency placement, or its accompanying documents, should contain a statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:

(1) The name, age, and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding;

(4) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been

made to locate and contact them, including contact with the appropriate BIA Regional Director (see www.bia.gov);

(5) The residence and the domicile of the Indian child;

(6) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the Tribe affiliated with that reservation or village;

(7) The Tribal affiliation of the child and of the parents or Indian custodians;

(8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(9) If the child is believed to reside or be domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child-custody matters, a statement of efforts that have been made and are being made to contact the Tribe and transfer the child to the Tribe's jurisdiction; and

(10) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

(e) 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 § 23.2.

§ 23.114 What are the requirements for determining improper removal?

(a) If, in the course of any child-custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained (such as after a visit or other temporary relinquishment of custody), the court must expeditiously determine whether there was improper removal or retention.

(b) If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to his or her parent or Indian custodian, unless returning the child to his parent or Indian custodian would subject the

child to substantial and immediate danger or threat of such danger.

Petitions To Transfer to Tribal Court**§ 23.115 How are petitions for transfer of a proceeding made?**

(a) Either parent, the Indian custodian, or the Indian child's Tribe may request, at any time, orally on the record or in writing, that the State court transfer a foster-care or termination-of-parental-rights proceeding to the jurisdiction of the child's Tribe.

(b) The right to request a transfer is available at any stage in each foster-care or termination-of-parental-rights proceeding.

§ 23.116 What happens after a petition for transfer is made?

Upon receipt of a transfer petition, the State court must ensure that the Tribal court is promptly notified in writing of the transfer petition. This notification may request a timely response regarding whether the Tribal court wishes to decline the transfer.

§ 23.117 What are the criteria for ruling on transfer petitions?

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:

(a) Either parent objects to such transfer;

(b) The Tribal court declines the transfer; or

(c) Good cause exists for denying the transfer.

§ 23.118 How is a determination of "good cause" to deny transfer made?

(a) If the State court believes, or any party asserts, that good cause to deny transfer exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing on the record and to the parties to the child-custody proceeding.

(b) Any party to the child-custody proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court must 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 receive 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 BIA social services or judicial systems.

(d) The basis for any State-court decision to deny transfer should be stated orally on the record or in a written order.

§ 23.119 What happens after a petition for transfer is granted?

(a) If the Tribal court accepts the transfer, the State court should expeditiously provide the Tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any court record.

(b) The State court should work with the Tribal court to ensure that the transfer of the custody of the Indian child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

Adjudication of Involuntary Proceedings

§ 23.120 How does the State court ensure that active efforts have been made?

(a) Prior to ordering an involuntary foster-care placement or termination of parental rights, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail in the record.

§ 23.121 What are the applicable standards of evidence?

(a) The court must not order a foster-care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) The court must not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) For a foster-care placement or termination of parental rights, the evidence must show a causal relationship between the particular

conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

(d) Without a causal relationship identified in paragraph (c) of this section, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

§ 23.122 Who may serve as a qualified expert witness?

(a) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. A person may be designated by the Indian child's Tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's Tribe.

(b) The court or any party may request the assistance of the Indian child's Tribe or the BIA office serving the Indian child's Tribe in locating persons qualified to serve as expert witnesses.

(c) The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child.

§ 23.123 [Reserved]

Voluntary Proceedings

§ 23.124 What actions must a State court undertake in voluntary proceedings?

(a) The State court must require the participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is reason to believe the child is an Indian child, as provided in § 23.107.

(b) If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child's status. This may include contacting the Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) to verify the child's status. As described in § 23.107, where a consenting parent

requests anonymity, a Tribe receiving such information must keep relevant documents and information confidential.

(c) State courts must ensure that the placement for the Indian child complies with §§ 23.129–23.132.

§ 23.125 How is consent obtained?

(a) A parent's or Indian custodian's consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain to the parent or Indian custodian:

(1) The terms and consequences of the consent in detail; and

(2) The following limitations, applicable to the type of child-custody proceeding for which consent is given, on withdrawal of consent:

(i) For consent to foster-care placement, the parent or Indian custodian may withdraw consent for any reason, at any time, and have the child returned; or

(ii) For consent to termination of parental rights, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of termination and have the child returned; or

(iii) For consent to an adoptive placement, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of adoption, and have the child returned.

(c) The court must certify that the terms and consequences of the consent were explained on the record in detail in English (or the language of the parent or Indian custodian, if English is not the primary language) and were fully understood by the parent or Indian custodian.

(d) Where confidentiality is requested or indicated, execution of consent need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(e) A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

§ 23.126 What information must a consent document contain?

(a) If there are any conditions to the consent, the written consent must clearly set out the conditions.

(b) A written consent to foster-care placement should contain, in addition to the information specified in paragraph (a) of this section, the name

and birthdate of the Indian child; the name of the Indian child's Tribe; the Tribal enrollment number for the parent and for the Indian child, where known, or some other indication of the child's membership in the Tribe; the name, address, and other identifying information of the consenting parent or Indian custodian; the name and address of the person or entity, if any, who arranged the placement; and the name and address of the prospective foster parents, if known at the time.

§ 23.127 How is withdrawal of consent to a foster-care placement achieved?

(a) The parent or Indian custodian may withdraw consent to voluntary foster-care placement at any time.

(b) To withdraw consent, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(c) When a parent or Indian custodian withdraws consent to a voluntary foster-care placement, the court must ensure that the Indian child is returned to that parent or Indian custodian as soon as practicable.

§ 23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?

(a) A parent may withdraw consent to voluntary termination of parental rights at any time prior to the entry of a final decree of termination.

(b) A parent or Indian custodian may withdraw consent to voluntary adoption at any time prior to the entry of a final decree of adoption.

(c) To withdraw consent prior to the entry of a final decree of adoption, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(d) The court in which the withdrawal of consent is filed must promptly notify the person or entity who arranged any voluntary preadoptive or adoptive placement of such filing, and the Indian child must be returned to the parent or Indian custodian as soon as practicable.

Dispositions

§ 23.129 When do the placement preferences apply?

(a) In any preadoptive, adoptive, or foster-care placement of an Indian child, the placement preferences specified in § 23.130 and § 23.131 apply.

(b) Where a consenting parent requests anonymity in a voluntary proceeding, the court must give weight

to the request in applying the preferences.

(c) The placement preferences must be applied in any foster-care, preadoptive, or adoptive placement unless there is a determination on the record that good cause under § 23.132 exists to not apply those placement preferences.

§ 23.130 What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (b) of this section, preference must be given in descending order, as listed below, to placement of the child with:

- (1) A member of the Indian child's extended family;
- (2) Other members of the Indian child's Tribe; or
- (3) Other Indian families.

(b) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply.

(c) The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent.

§ 23.131 What placement preferences apply in foster-care or preadoptive placements?

(a) In any foster-care or preadoptive placement of an Indian child under State law, including changes in foster-care or preadoptive placements, the child must be placed in the least-restrictive setting that:

- (1) Most approximates a family, taking into consideration sibling attachment;
- (2) Allows the Indian child's special needs (if any) to be met; and
- (3) Is in reasonable proximity to the Indian child's home, extended family, or siblings.

(b) In any foster-care or preadoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (c) of this section, preference must be given, in descending order as listed below, to placement of the child with:

- (1) A member of the Indian child's extended family;
- (2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (4) An institution for children approved by an Indian Tribe or operated

by an Indian organization which has a program suitable to meet the child's needs.

(c) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply, so long as the placement is the least-restrictive setting appropriate to the particular needs of the Indian child, as provided in paragraph (a) of this section.

(d) The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent.

§ 23.132 How is a determination of "good cause" to depart from the placement preferences made?

(a) If any party asserts that good cause not to 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.

(b) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is "good cause" to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences 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 of 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 a 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 parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

(e) 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 in violation of ICWA.

Access

§ 23.133 Should courts allow participation by alternative methods?

If it possesses the capability, the court should allow alternative methods of participation in State-court child-custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.

§ 23.134 Who has access to reports and records during a proceeding?

Each party to an emergency proceeding or a foster-care-placement or termination-of-parental-rights proceeding under State law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such action may be based.

§ 23.135 [Reserved]

Post-Trial Rights & Responsibilities

§ 23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, the State court may invalidate the voluntary adoption upon finding that the parent's consent was obtained by fraud or duress.

(b) Upon the parent's filing of a petition to vacate the final decree of adoption of the parent's Indian child, the court must give notice to all parties to the adoption proceedings and the Indian child's Tribe and must hold a hearing on the petition.

(c) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the final decree of adoption, order the consent revoked, and order that the child be returned to the parent.

§ 23.137 Who can petition to invalidate an action for certain ICWA violations?

(a) Any of the following may petition any court of competent jurisdiction to

invalidate an action for foster-care placement or termination of parental rights under state law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated:

(1) An Indian child who is or was the subject of any action for foster-care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's Tribe.

(b) Upon a showing that an action for foster-care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.

(c) To petition for invalidation, there is no requirement that the petitioner's rights under ICWA were violated; rather, a petitioner may challenge the action based on any violations of 25 U.S.C. 1911, 1912, or 1913 during the course of the child-custody proceeding.

§ 23.138 What are the rights to information about adoptees' Tribal affiliations?

Upon application by an Indian who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree of adoption must inform such individual of the Tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include Tribal membership, resulting from the individual's Tribal relationship.

§ 23.139 Must notice be given of a change in an adopted Indian child's status?

(a) If an Indian child has been adopted, the court must notify, by registered or certified mail with return receipt requested, the child's biological parent or prior Indian custodian and the Indian child's Tribe whenever:

(1) A final decree of adoption of the Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child.

(b) The notice must state the current name, and any former name, of the Indian child, inform the recipient of the right to petition for return of custody of the child, and provide sufficient information to allow the recipient to participate in any scheduled hearings.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice and filing the waiver with the court.

(1) Prior to accepting the waiver, the court must explain the consequences of

the waiver and explain how the waiver may be revoked.

(2) The court must certify that the terms and consequences of the waiver and how the waiver may be revoked were explained in detail in English (or the language of the parent or Indian custodian, if English is not the primary language), and were fully understood by the parent or Indian custodian.

(3) Where confidentiality is requested or indicated, execution of the waiver need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(4) The biological parent or Indian custodian may revoke the waiver at any time by filing with the court a written notice of revocation.

(5) A revocation of the right to receive notice does not affect any child-custody proceeding that was completed before the filing of the notice of revocation.

Recordkeeping

§ 23.140 What information must States furnish to the Bureau of Indian Affairs?

(a) Any State court entering a final adoption decree or order in any voluntary or involuntary Indian-child adoptive placement must furnish a copy of the decree or order within 30 days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information, in an envelope marked "Confidential":

(1) Birth name and birthdate of the Indian child, and Tribal affiliation and name of the Indian child after adoption;

(2) Names and addresses of the biological parents;

(3) Names and addresses of the adoptive parents;

(4) Name and contact information for any agency having files or information relating to the adoption;

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

(6) Any information relating to Tribal membership or eligibility for Tribal membership of the adopted child.

(b) If a State agency has been designated as the repository for all State-court adoption information and is fulfilling the duties described in paragraph (a) of this section, the State courts in that State need not fulfill those same duties.

§ 23.141 What records must the State maintain?

(a) The State must maintain a record of every voluntary or involuntary foster-care, preadoptive, and adoptive

placement of an Indian child and make the record available within 14 days of a request by an Indian child's Tribe or the Secretary.

(b) The record must contain, at a minimum, the petition or complaint, all substantive orders entered in the child-custody proceeding, the complete record of the placement determination (including, but not limited to, the findings in the court record and the social worker's statement), and, if the placement departs from the placement preferences, detailed documentation of the efforts to comply with the placement preferences.

(c) A State agency or agencies may be designated to be the repository for this information. The State court or agency should notify the BIA whether these records are maintained within the court system or by a State agency.

§ 23.142 How does the Paperwork Reduction Act affect this subpart?

The collections of information contained in this part have been approved by the Office of Management

and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076-0186. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW., Washington, DC 20240.

Effective Date

§ 23.143 How does this subpart apply to pending proceedings?

None of the provisions of this subpart affects a proceeding under State law for foster-care placement, termination of parental rights, preadoptive placement, or adoptive placement that was initiated prior to December 12, 2016, but the provisions of this subpart apply to any subsequent proceeding in the same

matter or subsequent proceedings affecting the custody or placement of the same child.

Severability

§ 23.144 What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?

If any portion of this part is determined to be invalid by a court of competent jurisdiction, the other portions of the part remain in effect. For example, the Department has considered separately whether the provisions of this part apply to involuntary and voluntary proceedings; thus, if a particular provision is held to be invalid as to one type of proceeding, it is the Department's intent that it remains valid as to the other type of proceeding.

Dated: June 6, 2016.

Lawrence S. Roberts,
Acting Assistant Secretary—Indian Affairs.
[FR Doc. 2016-13686 Filed 6-13-16; 8:45 am]
BILLING CODE 4310-02-P

Appendix D: Tribal Contacts & Service Area Maps

Bay Mills Indian Community

Tribal Court

12140 West Lakeshore Drive
Brimley, MI 49715
Tel: 906-248-3241

ICWA Designated Tribal Agent

Phyllis Kinney,
Tribal Court Administrator
12140 W. Lakeshore Dr.
Brimley, MI 49715
Tel: 906-248-3241
Fax: 906-248-5817
PHYLLISK@BAYMILLS.ORG

Tribal Social Services

12140 W. Lakeshore Drive
Brimley, MI 49715
Tel: 906-248-8303

The Grand Traverse Band of Ottawa and Chippewa Indians

Tribal Court

2605 N. West Bayshore Drive
Peshawbestown, MI 49682
Tel: 231-534-7050

ICWA Designated Tribal Agent

Helen Cook,
Anishinaabek Family Services
Supervisor
2605 N. West Bayshore Drive
Peshawbestown, MI 49682
Tel: 231-534-7681
Fax: 231-534-7706
HELEN.COOK@GTBINDIANS.COM

Tribal Social Services

2605 N. West Bayshore Drive
Peshawbestown, MI 49682
Tel: 231-534-7681
Fax: 231-534-7706

Hannahville Indian Community

Tribal Court

N14911 Hannahville B1 Road
Wilson, MI 49896
Tel: 906-466-9933

ICWA Designated Tribal Agent

Jessica Brock,
ICWA Worker
N15019 Hannahville B1 Road
Wilson, MI 49896
Tel: 906-723-2514
Fax: 906-466-7397
JESSICA.BROCK@HICHEALTH.ORG

Tribal Social Services

N15019 Hannahville B1 Road
Wilson, MI 49896
Tel: 906-466-2940
Tel: 906-723-2511
Fax: 906-466-7397

Keweenaw Bay Indian Community

Tribal Court

16429 Bear Town Road
Baraga, MI 49908
Physical Address:
427 N. Superior Ave.
Baraga, MI 49908
Tel: 906-353-8124

ICWA Designated Tribal Agent

Judith Heath,
Director Social Services
16429 Beartown Road
Baraga, MI 49908
Tel: 906-353-4201
Fax: 906-353-8171
JUDY@KBIC-NSN.GOV

Tribal Social Services

16429 Bear Town Road
Baraga, MI 49908
Tel: 906-353-4201
Fax: 906-353-8171

Lac Vieux Desert Band of Lake Superior Chippewa Indians

Tribal Court

ICWA Designated Tribal Agent

Tribal Social Services

P.O. Box 249 – Choate Road
N4698 US 45
Watersmeet, MI 49969
Tel: 906-358-0330

Dee Dee McGeshick,
Social Services Director
Marisa Vanzile,
ICW Caseworker
P.O. Box 249
Watersmeet, MI 49969
Tel: 906-358-4940
Fax: 906-358-4900
DEE.MCGESHICK@LVDTRIBAL.COM

P.O. Box 249 – Choate Road
N4698 US 45
Watersmeet, MI 49969
Tel: 906-358-4577

Little River Band of Ottawa Indians

Tribal Court
3031 Domres Road
Manistee, MI 49660
Tel: 231-723-8288

ICWA Designated Tribal Agent
William Gregory,
Tribal Prosecutor
3031 Domres Road
Manistee, MI 49660
Tel: 213-398-2242
Cell: 616-490-3300
Fax: 231-398-3404
BGREGORY@LRBOI.COM

Tribal Social Services
3031 Domres Road
Manistee, MI 49660
Tel: 231-398-2242

2608 Government Center Drive
Manistee, MI 49660
Tel: 231-398-6707
Tel: 1-888-723-8288
Fax: 231-398-9680

1101 West Hackley
Muskegon, MI 49442
Tel: 231-398-6651
Tel: 1-888-723-8288
Fax: 231-398-6655
FAMILYSERVICES@LRBOI-NSN.GOV

Little Traverse Bay Bands of Odawa Indians

Tribal Court
Mailing:
7500 Odawa Circle
Harbor Springs, MI 49740
Physical:
911 Spring St.
Petoskey, MI 49770
Tel: 231-242-1462
Fax: 231-242-1470

ICWA Designated Tribal Agent
Denneen Smith,
Human Services Director
7500 Odawa Circle,
Harbor Springs, MI 49740
Tel: 231-242-1620
Fax: 231-242-1635
DMSMITH@LTBBODAWA-NSN.GOV

Tribal Social Services
7500 Odawa Circle
Harbor Springs, MI 49740
Physical:
911 Spring St.
Petoskey, MI 49770
Tel: 231-242-1620
Tel: 231-242-1621
Fax: 231-242-1635

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake Tribe)

Tribal Court
1743 142nd Avenue
P.O. Box 218
Dorr, MI 49323
Tel: 616-681-0697

2873 Mno Bmadzewen Dr.
Shelbyville, MI 49344

ICWA Designated Tribal Agent
SarahJane Watrous, LMSW,
Human Services Coordinator
2880 Mission Dr.
Shelbyville, MI 49344
Tel: 616-681-0360; ext: 1108
Fax: 269-397-1763
SARAHJANE.WATROUS@HHS.GLT-

Tribal Social Services
1743 142nd Avenue
P.O. Box 218
Dorr, MI 49323
Tel: 616-681-0360
2880 Mission Dr.
Shelbyville, MI 49344

Tel: 269-397-1630
Fax: 269-397-1631

NSN.GOV

Tel: 269-397-1760
Fax: 269-397-1761

Nottawaseppi Huron Band of the Potawatomi

Tribal Court

2221 1 ½ Mile Road
Fulton, MI 49052
Tel: 269-729-5151
Fax: 269-729-4826

ICWA Designated Tribal Agent

Meg Fairchild, LMSW, CAAC,
Clinical Social Worker
1474 Mno Bmadzewen Way
Fulton, MI 49052
Tel: 269-729-4422
Fax: 269-729-4460
SOCIALWPC@NHBP.ORG

Tribal Social Services

2221 1 ½ Mile Road
Fulton, MI 49052
Tel: 269-729-5151
Fax: 269-729-4826

Pokagon Band of Potawatomi Indians

Tribal Court

58620 Sink Road
P.O. Box 355
Dowagiac, MI 49047
Tel: 269-783-0505
Fax: 269-783-0519

ICWA Designated Tribal Agent

Mark Pompey,
Social Services Director
58620 Sink Road
Dowagiac, MI 49047
Tel: 269-782-8998
Fax: 269-782-4295
MARK.POMPEY@POKAGONBAND-NSN.GOV

Tribal Social Services

58620 Sink Road
P.O. Box 180
Dowagiac, MI 49047
Tel: 269-782-8998
Tel: 800-517-0777

Saginaw Chippewa Indian Tribe

Tribal Court

Public Safety Building
6954 East Broadway
Mt. Pleasant, MI 48858
Tel: 989-775-4800
Fax: 989-773-9985

ICWA Designated Tribal Agent

Attn: ICWA Director
7070 East Broadway
Mt. Pleasant, MI 48858
Tel: 989-775-4909
Fax: 989-775-4912

Tribal Social Services

7070 East Broadway
Mt. Pleasant, MI 48858
Tel: 989-775-4909

Sault Ste. Marie Tribe of Chippewa Indians

Tribal Court

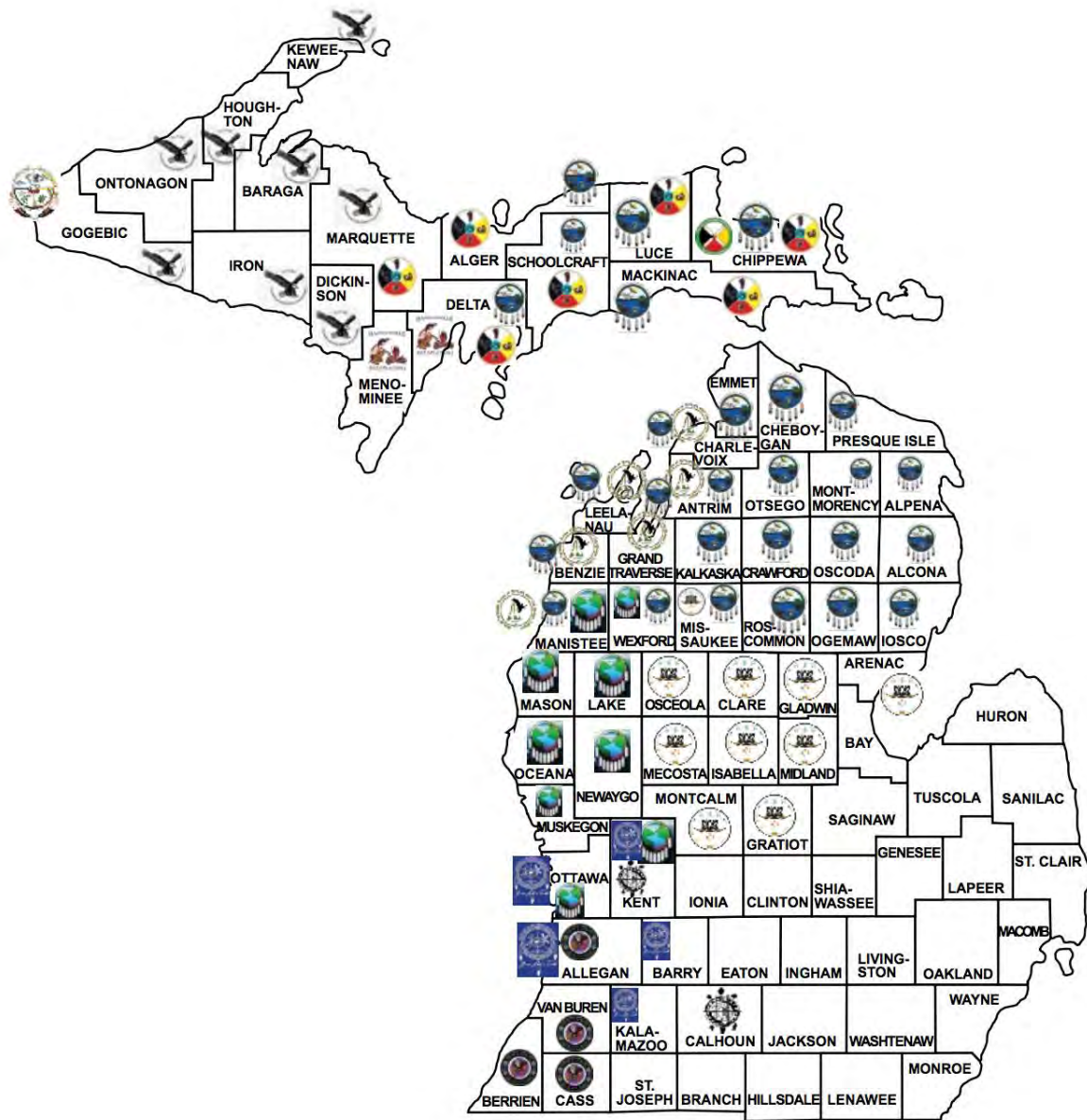
George K. Nolan Judicial
Building
2175 Shunk Road
P.O. Box 932
Sault Ste. Marie, MI 49783
Tel: 906-635-4963

ICWA Designated Tribal Agent

Juanita Bye
ACFS Division Director
2218 Shunk Road
Sault Ste. Marie, MI 49783
Tel: 906-632-5250
Fax: 906-632-5266
JBYE@SAULTTRIBE.NET

Tribal Social Services

2218 Shunk Road
Sault Ste. Marie, MI 49783
Tel: 800-726-0093



Tribal Service Areas by County

Bay Mills Indian Community

Chippewa

Grand Traverse Band of Ottawa and Chippewa Indians

Antrim

Benzie

Charlevoix

Grand Traverse

Leelanau

Manistee

Hannahville Indian Community

Delta

Menominee

Keweenaw Bay Indian Community

Baraga

Houghton

Keweenaw

Gogebic

Ontonagon

Marquette

Iron

Dickinson

Lac Vieux Desert Band of Lake Superior Chippewa Indians

Gogebic

Iron

Ontonagon

Little River Band of Ottawa Indians

Kent

Lake

Manistee (Main Office: 375 River Street, Manistee, MI 49660)

Mason

Muskegon (Satellite Office: 1101 West Hackley, Muskegon, MI 49441)

Newaygo

Oceana

Ottawa

Wexford

Nottawaseppi Huron Band of Potawatomi

Allegan

Barry

Branch
Calhoun
Kalamazoo
Kent
Ottawa

Pokagon Band of Potawatomi

Michigan:
Allegan
Berrien
Cass
Van Buren

Indiana:
Elkhart
Kosciusko
LaPorte
Marshall
St. Joseph
Starke

Saginaw Chippewa Indian Tribe

Arenac
Clare
Gladwin
Gratiot
Isabella
Mecosta
Midland
Missaukee
Montcalm
Osceola

Sault Ste. Marie Tribe of Chippewa Indians

Alger
Chippewa
Delta
Luce
Mackinac
Marquette
Schoolcraft

Appendix E: ICWA / MIFPA CHECKLIST

1) DETERMINATION OF INDIAN ANCESTRY

- a. Inquiry about Indian ancestry
 - i. Have both parents been identified?
 - ii. Have attempts to locate absent/missing parent begun?
 - iii. Have both parents or guardian and child, if age appropriate, been asked if child is American Indian or have American Indian ancestors?
 - iv. Have both parents been asked if they are members of a federally recognized tribe?
 - v. Are child and parents' race and ethnicity documented in case record?
 - vi. If suspected of having Indian heritage, is child being treated as ICWA case until ruled out?
 - vii. Has Notice of Inquiry Under the Indian Child Welfare Act been sent to the Tribe(s)?
- b. Identification of Indian Child
 - i. Is child a member of a federally recognized tribe?
 - ii. Has documentation of membership been received from tribe?
 - iii. If not a Tribal member, is child the child of a member and eligible for membership?
 - iv. Has documentation of eligibility for membership been received from tribe?
 - v. Is child eligible for membership in more than one tribe?
- c. Identification of Tribal membership is NOT established:
 - i. Have all possible Tribes and Bureau of Indian Affairs been contacted?
 - ii. Have all steps been taken to establish Indian ancestry and eligibility for tribal membership been documented in case file?

2) TRIBAL NOTIFICATION

- a. Has Notice Required By The Indian Child Welfare Act (25 USC §1912) been sent by registered mail?
- b. Has return receipt of delivery of Notice Required By The Indian Child Welfare Act (25 USC 1912) been requested?
- c. Is there documentation of Tribal contact, address and phone numbers for notification of court proceedings and scheduled reviews?
- d. Has contact been made with the Tribe to determine if child resides on the reservation or is a ward of the tribal court?

3) TRANSFER OF JURISDICTION

- a. Does the tribal court have exclusive jurisdiction over the case because the child resides on the reservation or is a ward of the tribal court?
- b. Has the tribe or Indian custodian or parent petitioned for a transfer of jurisdiction?
- c. Was this transfer request granted?
- d. If yes, is there documentation of transfer of case to tribal court?
- e. Is a copy of transfer of Jurisdiction Order in case file?
- f. Is there documentation of Tribe decision to maintain exclusive or transfer jurisdiction, but allow child to remain in DSS placement?

4) TRIBAL INTERVENTION

- a. Does the Tribe want to be involved in case?

- b. Is there documentation of extent of Tribal desired involvement?
- 5) EFFORTS TO PREVENT THE BREAKUP OF INDIAN FAMILY
 - a. Is there participation of Tribal representative at the early point in case planning?
 - i. Does the child's service plan reflect active efforts to reunify the Indian family?
 - ii. Is Tribe given access to any reports or documents filed with the court upon which the court's decision may be based?
 - b. Has tribal representative with knowledge of prevailing social and cultural standards within tribal community been located?
 - i. Has the family's circumstance been assessed?
 - ii. Has a case plan been developed with parent/guardian that utilizes tribal and Indian community resources?
 - c. If needed, has financial assistance, food stamps, housing, etc., been provided?
 - d. Has extended family members been contacted as a resource for the child?
 - e. Has a visitation plan to keep child in close contact with parents, siblings, and other relatives been developed, if child is in an out of home placement?
- 6) PLACEMENT PREFERENCES
 - a. Has the Tribe been contacted to determine if it has established an order of placement preference by resolution?
 - b. Have the Tribe and parent/guardian been notified prior to any change in child's placement?
 - c. Does the placement meet the placement preference requirement of ICWA as specified by child's Tribe?
 - d. Is the foster care or pre-adoptive placement in reasonable proximity to child's home and the least restrictive setting with most appropriate family?
 - e. For foster or pre-adoptive placement:
 - i. Is the placement with a member of child's extended family?
 - ii. Is the foster home licensed and approved by Indian child's tribe?
 - iii. Is the Indian foster home licensed and approved by non Indian licensing authority?
 - iv. Is the children's institution approved by the Tribe or operated by an Indian organization which has a program suitable to meet the child's needs?
 - v. Did the trial court for good cause allow a different placement for the child?
 - f. For adoptive placement
 - i. Is the placement with a member of child's extended family?
 - ii. Is placement with other members or the child's Tribe?
 - iii. Is placement with another Indian family of similar Indian heritage?
 - iv. Is placement with another Indian family?
 - v. Did the trial court for good cause allow a different adoptive placement for this child?
 - g. Was Tribe contacted and utilized to assist in identification of a tribally approved out of home placement for the child?
 - h. Were efforts made to place the Indian child in an Indian home?
 - i. If an Indian child was placed in a non-Indian home, did the court modify the order of ICWA placement preference showing good cause?

- j. Does documentation exist showing each placement and the efforts to comply with the mandates of ICWA placement preference?

Appendix F: Judicial Questions / Active Efforts Determination

Here are some questions that a court might ask to ascertain whether a CPS or foster care caseworker has made the “active efforts” required by MIFPA and ICWA.

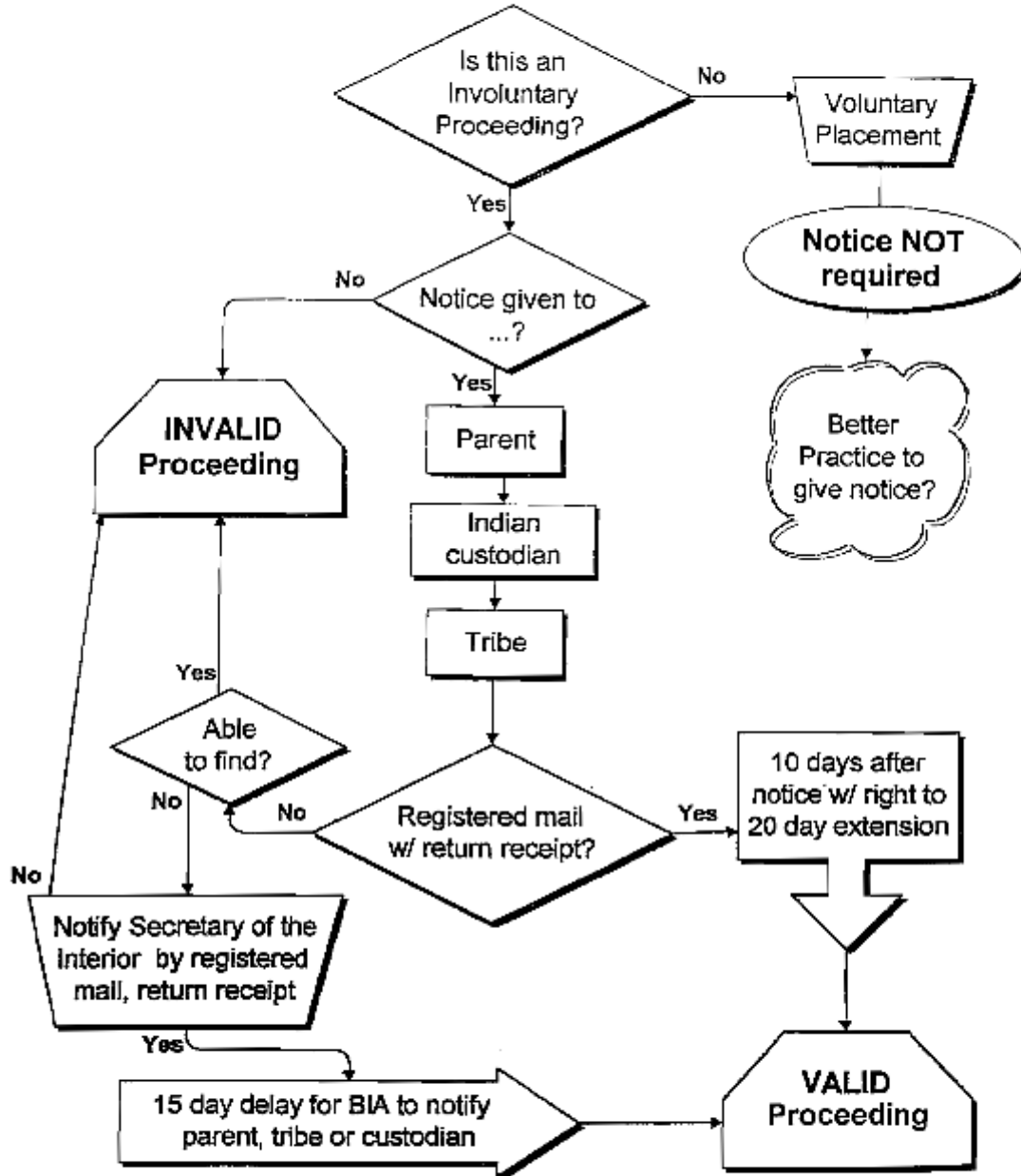
- 1) Have you contacted the child’s tribe to ensure that all possible services are offered to this child and the family?
- 2) Have you contacted the child’s tribe to ascertain how that tribe defines “active efforts”?
- 3) How does the current case service plan take into account the cultural needs of this child and the family?
- 4) Does the tribe have a mentor or the equivalent of a state Court Appointed Special Advocate who will help the child?
- 5) What steps have you taken to ensure that the family keeps each appointment and can access the services required by their case service plan?
- 6) What steps have you taken to ensure that the family and child will benefit from those services?
- 7) Describe, in detail, the active efforts made prior to removal and placement of the child(ren). Explain why those efforts were unsuccessful.
- 8) If active efforts were not made, explain why that was not possible.
- 9) Is the child placed according to ICWA placement preferences? If not, why? What efforts are being made to place the child in an ICWA compliant placement? Does the child’s tribe have a different order of placement preferences?
- 10) Was the Tribe contacted and utilized to assist in relative searches or identification of a Tribally designed or approved foster home, institution or residential program?
- 11) If there was no Tribal involvement, was effort made to place an Indian child in an Indian home? If placement was changed, was the Tribe or Parent and Custodian notified in writing?
- 12) Did the child’s tribe seek to intervene at any time during this case? If so, what types of intervention were requested, and what occurred as a result of the request?
- 13) Has the child’s tribe participated in providing or delivering services for the child and family? If so, what services were developed or provided by the tribe?
- 14) Who identified and retained the expert witness in this case?
- 15) Have you contacted the expert witness? If so, what information did you provide to the expert witness? If not, explain what circumstances prevented interaction with the expert witness.
- 16) Were the Indian child’s ancestry verification and the notifications about court hearings accomplished according to ICWA guidelines? If not, what prevented you from complying with those ICWA guidelines?

17) Was the Indian child invited to attend the hearing or to provide testimony in some other way? If not, why not?

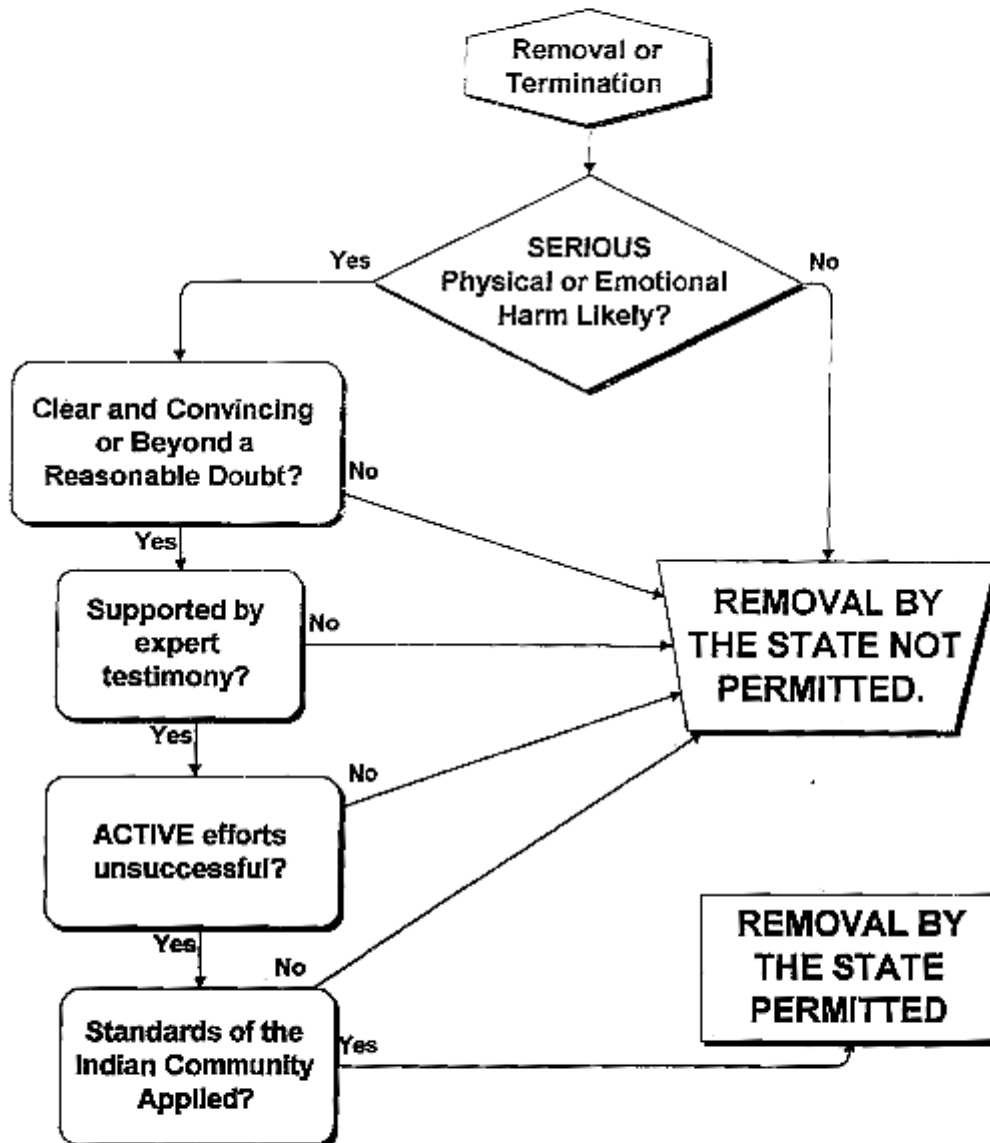
Appendix G: Flow Charts

The flow charts on the following pages were graciously provided by the **Native American Rights Fund** and the **National Resource Directory for Juvenile and Family Court Judges**, published by the National Council of Juvenile and Family Court Judges.

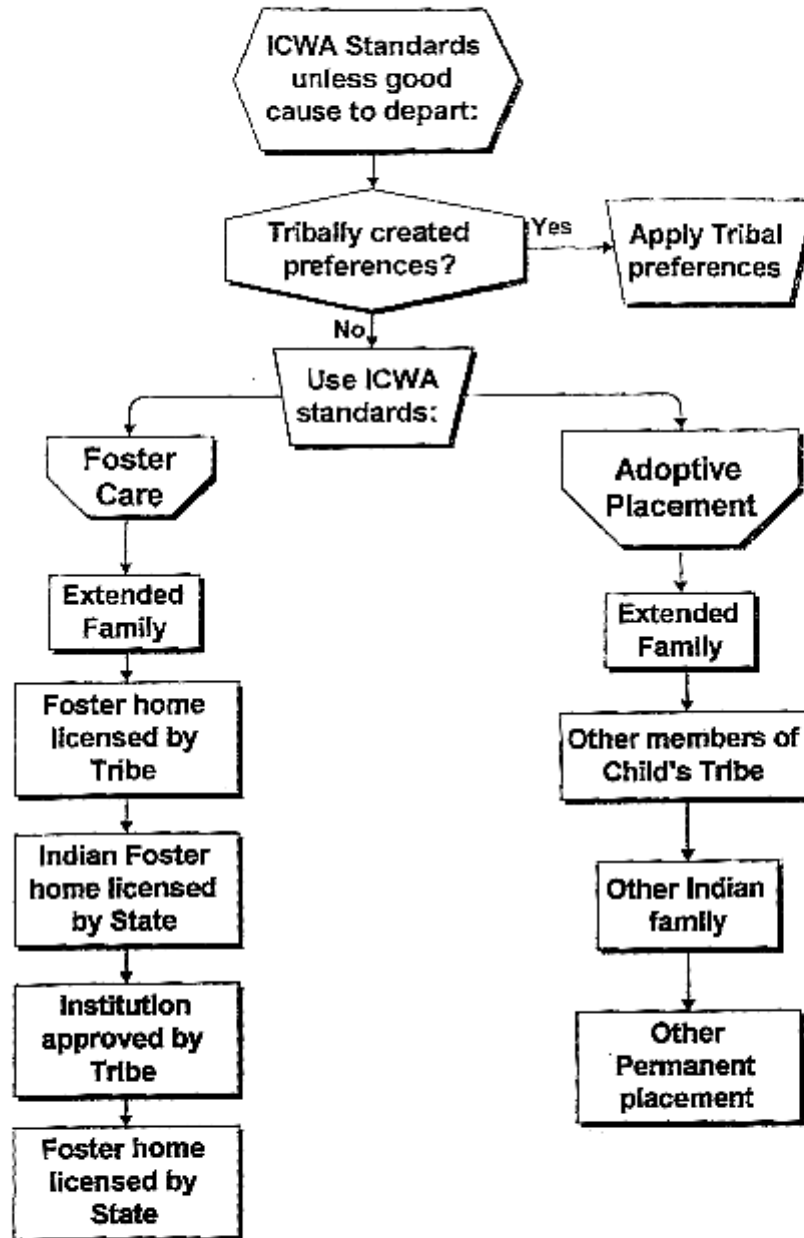
Notice Requirements of ICWA (Sec 102)



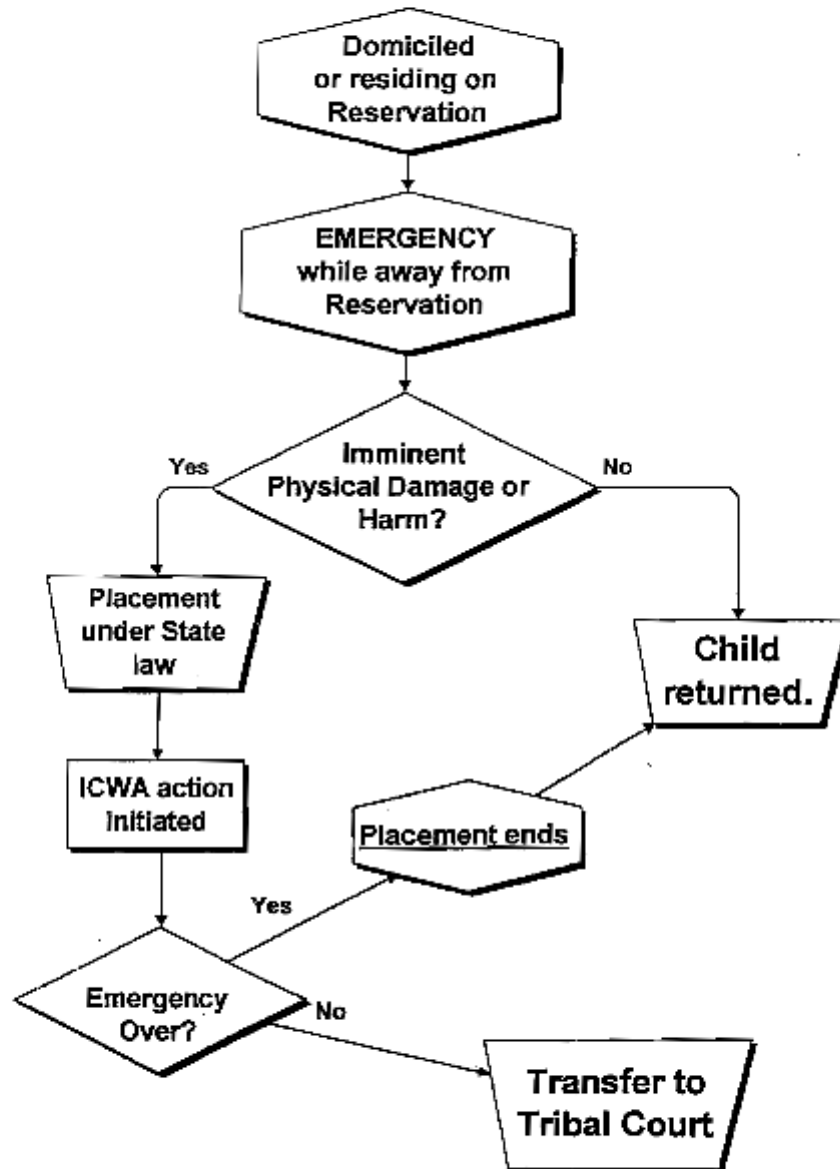
Checklist for Removal or Termination (Sec 102)



Placement Preferences (Sec 105)



Emergency Removal (Sec 112)



Appendix H: Resources

Director, Midwest Regional Office
Bureau of Indian Affairs
Department of the Interior
Norman Pointe II Building
5600 W. American Blvd., Suite 500
Bloomington, MN 55437
Phone: (612)713-4400

Michigan Agency
Bureau of Indian Affairs
Department of the Interior
2845 Ashmun Street
Sault Ste. Marie, MI 49783
Phone: (906) 632-6809

Bureau of Indian Affairs - Guidelines for State Courts; Indian Child Custody Proceedings:
<HTTPS://WWW.BIA.GOV/CS/GROUPS/PUBLIC/DOCUMENTS/TEXT/IDC2-056831.PDF>

Federally Recognized Tribes in Michigan with Links to Tribal Statutes:
<HTTP://COURTS.MI.GOV/COURTS/TRIBALCOURTS/PAGES/DEFAULT.ASPX>

Bureau of Indian Affairs – Contacts for ICWA Notices:

<http://www.indianaffairs.gov/cs/groups/webteam/documents/document/idc1-033460.pdf>

A Practical Guide to the Indian Child Welfare Act – Frequently Asked Questions Index:
<HTTP://WWW.NARF.ORG/ICWA/FAQ/INDEX.HTM>

National Indian Child Welfare Association: <HTTP://WWW.NICWA.ORG/>

National American Indian Court Judges Association: <HTTP://WWW.NAICJA.ORG/>

Michigan Department of Human Services – ICWA Field Guide (Native American Affairs):
HTTP://MICHIGAN.GOV/DOCUMENTS/MDHHS/ICWA_FIELDGUIDE_6-2012_390313_7.PDF

Michigan Department of Human Services – Policy and Procedure Manuals (Native American Affairs): <HTTP://WWW.MFIA.STATE.MI.US/OLMWEB/EX/HTML/>

Michigan Department of Human Services – Services and Delivery Systems for Native Americans in Michigan: HTTP://WWW.MICHIGAN.GOV/MDHHS/0,1607,7-124-5452_7124_7209---,00.HTML

Urban Indian Organizations in Michigan

- 1) North American Indian Association of Detroit (WWW.NAIADETROIT.ORG)**
22720 Plymouth Road
Detroit, MI 48239-1327
Tel. (313) 535-2966
Fax (313) 535-8060

- 2) American Indian Health and Family Services of Southeastern MI, Inc.**
(WWW.AIHFS.ORG)
4880 Lawndale
Detroit, MI 48210
Tel. (313) 846-3718
Fax (313) 846-0150

- 3) American Indian Services, Inc.**
1110 Southfield Road
Lincoln Park, MI 48146
Tel. (313) 388-4100
Fax (313) 388-6566

- 4) South Eastern Michigan Indians, Inc. (www.semii.itgo.com)**
26641 Lawrence St.
Centerline, MI 48015
Tel. (586) 756-1350
Fax (586) 756-1352

- 5) Nokomis Learning Center**
5153 Marsh Road
Okemos, MI 48864-1198
Tel. (517) 349-5777
Fax (517) 349-8560

- 6) Native American Family Services**
671 Davis Street NW Suite 103,
Grand Rapids, MI 49504
Tel. (616) 451-6767



Online resources for more information:

courts.mi.gov/icwamifpa

courts.mi.gov/tribalcourt

michigan.gov/mdhhs

nicwa.org

REV. June 2017