

Michigan Indian Family Preservation Act

Frequently Asked Questions

What is the Indian Child Welfare Act (ICWA)?

The ICWA is a federal law passed in 1978. Congress stated in section 1902 of the ICWA that it is our nation's policy to protect the best interests of Indian children and to promote stability and security of Indian tribes and families by establishing minimum federal standards for the removal of Indian children from their homes and placement of those children into foster homes.

Why was ICWA passed?

Congress noted in section 1901 of the ICWA:

“(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.”

Why was the Michigan Indian Family Preservation Act (MIFPA) drafted if a federal law already exists?

By enacting MIFPA into state law, the ICWA is no longer a distant and unfamiliar federal requirement. Studies have shown that ICWA is not implemented consistently across the state of Michigan. Therefore, its enactment into state law provides a direct link to state child welfare professionals. Additionally, the ICWA is not necessarily comprehensible, and there are several issues for which the ICWA does not provide adequate explanation or instruction. MIFPA would provide the clarification necessary for consistent state wide implementation and the continued survival of federally recognized tribes and protection of tribal sovereignty.

To whom does the Michigan Indian Family Preservation Act (MIFPA) and the Indian Child Welfare Act (ICWA) apply?

The ICWA and MIFPA apply to state trial courts and the Michigan Department of Human Services (DHS). Tribes do not have to apply these laws to their own citizens over whom they retain jurisdiction. These standards are meant for state entities which have jurisdiction over an Indian child as defined by both Acts.

What is a “federally recognized tribe?”

Federally recognized tribes are those recognized by the United States government for certain federal government purposes. Some tribes may only be recognized by a particular state which does not necessarily qualify that same tribe as federally recognized.

There are twelve federally recognized tribes in Michigan. They include:

1. Bay Mills Indian Community

12140 West Lakeshore Drive
Brimley, MI 49715
906-248-3241
Website: <http://www.baymills.org/tribalcourt>

2. The Grand Traverse Band of Ottawa and Chippewa Indians

2605 N.W. Bayshore Drive
Peshawbestown, MI 49682
231-534-7050
Website: <http://www.gtbindians.org>

3. Hannahville Indian Community

N14911 Hannahville, B-1 Road
Wilson, MI 49896
906-466-2932
Website: <http://www.hannahville.net/>

4. Nottawaseppi Huron Band of Potawatomi

Pine Creek Reservation
2221 1 1/2 Mile Road
Fulton, MI 49052
269-729-5151
Website: <http://www.nhbpi.com>

5. Keweenaw Bay Indian Community

107 Beartown Road
Baraga, MI 49908
906-353-6623
Website: <http://www.kbic-nsn.gov>

6. Lac Vieux Desert Band of Lake Superior Chippewa Indians

P.O. Box 249
Watersmeet, MI 49969
906-358-4577
Website: <http://www.lvdtribal.com>

7. Little River Band of Ottawa Indians

3031 Domres Road
Manistee, MI 49660
231-723-8288
Website: <http://www.lrboi.com/council>

8. Little Traverse Bay Bands of Odawa Indians

7500 Odawa Circle
Harbor Springs, MI 49740
231-242-1400
Website: <http://www.ltbododawa-nsn.gov>

9. Pokagon Band of Potawatomi Indians

P.O. Box 355
58620 Sink Road
Dowagiac, MI 49047
269-783-0505
Website: <http://www.pokagon.com/tribalcourt.htm>

10. Saginaw Chippewa Indian Tribe

Public Safety Building
6954 E. Broadway Road
Mt. Pleasant, MI 48858
989-775-4800
Website: <http://www.sagchip.org>

11. Sault Ste. Marie Tribe of Chippewa Indians

George K. Nolan Judicial Building
2175 Shunk Road
P.O. Box 932
Sault Ste. Marie, MI 49783
906-635-4963
Website: <http://www.saulttribe.com>

12. Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake Tribe)

P.O. Box 218
1743 142nd Avenue
Dorr, MI 49323
Website: <http://www.mbpi.org>

How many federally recognized tribes are there in the United States?

There are 564 federally recognized tribes in the United States. Each tribe's name, tribal chair, and contact information can be found in the Bureau of Indian Affairs **Tribal Leaders Directory**.
<http://www.bia.gov/idc/groups/xois/documents/text/idc002652.pdf>

Do ICWA/MIFPA apply if a child in Michigan belongs to a federally recognized tribe located outside of Michigan?

Yes. Both the ICWA and MIFPA apply to "Indians" and each statute defines the term identically. Indians are citizens of a United States federally recognized tribe or an Alaskan native, as defined by the Alaska Native Claims Settlement Act.

Why doesn't MIFPA expand coverage to State Historical Tribes?

Michigan does not have a formal process whereby State Historical Tribes are acknowledged, registered, or otherwise recognized. Without a standardized procedure, identifying State Historical Tribes would be totally subjective and thereby extremely difficult.

Do all Indians live on reservations?

No. According to the 2000 U.S. Census, 33.5% of Indians live on federal reservations, federal trust land, state reservation land, or other tribal designated statistical areas. This means that 66.5% of Indians do not live on designated reservation land.

What is the correct term to use – Indian, Native American, or American Indian?

There is no single correct term. The ICWA itself uses the terms “Indian” starting with the Act’s official title. For consistency, when discussing ICWA or MIFPA we will use the term “Indian.”

Why are Indians treated differently from all other children in the child welfare system?

Congress noted that the studies it commissioned to evaluate the state of child custody proceedings as they relate to Indian children showed a disproportionately high number of Indian children removed from their homes. Furthermore, these same children were overwhelmingly placed in non-Indian homes. Higher standards for the removal and placement of Indian children, combined with tribal rights protection, seek to right the wrongs of the past.

Do ICWA and MIFPA apply to self identified Indians who do not belong to a federally recognized tribe?

No. DHS may provide services to a self identified Indian, but ICWA and MIFPA will not apply unless that person is also a citizen of or eligible for citizenship in a federally recognized tribe.

Do ICWA and MIFPA apply to Indians from Canada and Mexico?

No. The definition of Indian tribe in each Act includes only those Indian tribes, bands, nations or other organized groups or communities of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior (i.e., the Bureau of Indian Affairs, or BIA). The Secretary is part of the United States government and does not formally recognize or provide services to Indian tribes outside of her borders.

Who determines if a person is a citizen or eligible for citizenship in an Indian tribe?

Each tribe makes its own final and binding determination on who is or is not a citizen or eligible for citizenship. If there is doubt as to a person’s citizenship, only the tribe in question can make the determination.

What is the “existing Indian family exception” and does Michigan recognize it?

This is a judicially created exception to the ICWA that emerged from a 1982 Kansas court case. Essentially this doctrine states that ICWA was only enacted to protect the removal of an Indian child from an existing Indian family or unit. In other words, if the child was never engaged with the tribe or exposed to his Indian heritage, then ICWA would not apply. Michigan does NOT recognize this doctrine, and the MIFPA language specifically prohibits it.

If a tribe fails to intervene in a case, or even respond to notice, does the ICWA or MIFPA still apply?

Yes. The ICWA and MIFPA requirements apply to state trial courts and state social services agencies. Therefore, Michigan courts and DHS caseworkers must apply ICWA/ MIFPA regardless of whether a tribe intervenes.

To what proceedings do these Acts apply?

- All abuse and neglect/foster care hearings (adjudication, placement, disposition, dispositional review, and termination hearings, etc.);
- Guardianships (juvenile guardianships in the Probate Code as well as full and limited guardianships in the Estates and Protected Individuals Code);
- Adoptions;
- Status offenses.

Does the MIFPA add new definitions that are not in the ICWA? Why?

Yes. The MIFPA added several definitions to clarify the federal law. These include:

- Active efforts
- Culturally appropriate services
- Domicile
- Qualified expert witness
- Voluntary child custody proceedings
- Ward of tribal court

These definitions were included in the MIFPA to clarify concepts. The term “culturally appropriate services,” for example, may mean different things to different trial courts around the state.

Consistent application of the law is possible when defining these commonly used ICWA terms.

What if a party to an abuse and neglect case states in court that he or she believes he may be an Indian? Do ICWA and MIFPA really apply if the person doesn't know for sure?

Yes, until a final citizenship determination is made. It is better to assume it applies than to assume it does not and have all subsequent proceedings overturned for failing to comply with the law.

Notice of the proceedings must be sent to the BIA Regional Office in Minnesota. The notice should include as much genealogical information as possible in order to assist the BIA office in its determination of whether the person is an Indian for purposes of ICWA/MIFPA. It is highly recommended that notice also be sent to the BIA office located in Michigan as this may facilitate a quicker and more thorough response especially if the suspected tribe is located in Michigan.

If the BIA responds that the person is an Indian, the ICWA/MIFPA continues to apply. If the BIA responds that the person is not an Indian, the ICWA/MIFPA does not apply. It is likely however, that the BIA may respond that there is insufficient evidence to determine to which tribe the child may belong. In this case, the BIA may state that the child is likely to belong to a specific tribe and that contact should be made directly with that tribe. For example, if the BIA office states that the child is likely Cherokee, there are three federally recognized Cherokee tribes that will need to be contacted. [(1) The Cherokee Nation of Oklahoma, headquartered in Tahlequa, OK; (2) The Eastern Band Cherokee Indians of North Carolina, headquartered in Cherokee, NC; and (3) The United Keetoowah Band of Cherokee Indians, headquartered in Tahlequa, OK]

Best practice is to inform the caseworker and parent that they should work closely to gather as much information as possible in case some evidence was overlooked. Otherwise, the BIA office (Regional in Minnesota or state office) may never be able to identify the child's particular tribe which creates more confusion for courts and DHS.

Does ICWA/MIFPA apply when a parent, with an open abuse and neglect case, wants to release his or her rights rather than face trial on the abuse and neglect petition?

Yes. This scenario is not uncommon, and the legislation clearly states that ICWA/MIFPA apply when an Indian child's parent releases his or her rights under the Adoption Code even if there is a pending abuse and neglect case.

What happens if an Indian parent consents to a guardianship, but when that parent demands to have the child returned (a right allowed under ICWA/MIFPA), the trial court feels that returning the child home may jeopardize his safety or well being?

MIFPA addresses this issue by treating a trial court's determination that terminating a guardianship will jeopardize the child's health, safety, and welfare as an emergency removal. Current Michigan law states that if a child is removed under these emergency circumstances, an emergency removal court hearing must occur within 24 hours of the removal, excluding Sundays and holidays.

Since an Indian child's parent has the right to demand return of his or her child after voluntarily placing that child in a guardianship, a trial court must comply with the parent's demand. However, a judge may determine that the home is too dangerous, and the child should remain with the guardian. In that situation, MIFPA states that the court must:

1. Treat the refusal to return the child upon demand as an emergency removal request,
2. Contact DHS to initiate a protective proceedings investigation,
3. Conduct an emergency removal hearing within 24 hours, and
4. Comply with the emergency removal hearing requirements contained in Michigan Court Rule 3.974(B)(3).

What if an Indian child's parent files a petition or demand to terminate a guardianship but the judge believes, based on the circumstances that terminating the guardianship may endanger the child. Must the judge terminate the guardianship?

No. If a judge believes that terminating the guardianship will place the Indian child's health, safety, and welfare at risk, a judge is not required to grant the petition. However, if a court denies the guardianship termination petition, then that denial is treated as an emergency removal under Michigan law and court rule. The MIFPA outlines specifically what a court must do next to remain in compliance with ICWA/MIFPA.