

ICWA/MIFPA REQUIREMENTS

The Indian Child Welfare Act (ICWA) and Michigan Indian Family Preservation Act (MIFPA) requirements apply in cases where the department initiates a child custody proceeding/petition in court for:

- Children's Protective Services (CPS).
- Foster Care placement.
 - Family or Group Home.
 - Institution.
- Ongoing Foster Care placement.
- Guardianship or Limited Guardianship placement (EPIC).
- Juvenile Guardianship placement.
- Pre-adoption and Adoption placement.
- Juvenile Justice placement (status offense).

And, if:

- The child is a member of a U.S. federally recognized Indian tribe.
- The child is eligible for membership in a U.S. federally recognized Indian tribe (Indian Child Welfare Act, 25 USC 1903(4) and Michigan Indian Family Preservation Act MCL 712B. 1 - 41).

TRIBAL AFFILIATION INQUIRY

Identification of a child at the earliest point of contact is important for both non-court and court cases.

Caseworkers must inquire of the parent(s), caretaker(s), child(ren), or Indian custodian(s) for each child in the household:

“Does this child or parent have any affiliation with any American Indian tribe?”

Note: Caseworkers should also ask this question to other family members who become involved in the case.

Note: Caseworkers must document that this question was asked, of whom, and how it was answered.

Note: An Indian child may not be Indian in appearance. An Indian child may have what appears to be a non-Indian surname.

If the child or the child's parent has affiliation with an American Indian/Alaska Native or Canadian tribe, the caseworker may gather as many of the following from the child or parent or any other person with knowledge of the child's or parent's tribal affiliation in a culturally competent manner:

- Name of the tribe(s) in which the child or parent is a member or eligible for membership.
- The tribe's address and telephone number.
- A copy of the tribal identification card or letter from the tribe regarding enrollment or identification number(s) of the parent(s) and child(ren).
- Name of the child's:
 - Birth mother (including any maiden name).
 - Maternal and paternal grandparents.
 - Putative, biological, or legal father.
- Birth places of the child and the child's parents.
- Social Security numbers for the child and the child's parents.
- If the birth mother was adopted, obtain the name of the mother's birth mother (if available).
- Degree of Indian blood or certificate of Indian blood of the child and parents.
- Other information about extended family members, including the names, clan affiliation, dates of births, and addresses of grandparents, aunts, uncles, cousins, great grandparents, step-parents, first and second cousins.

**VERIFICATION OF
TRIBAL
MEMBERSHIP**

For cases where the department initiates a child custody proceeding/petition in court, the caseworker must request verification of the child's Indian status by sending a DHS-120, American Indian/Alaska Native Child Case Notification, **by registered mail with return receipt** to **all** of the following:

- Parent(s).
- Indian custodian(s), if any.
- Tribe(s) [Addressed to the ICWA Designated Tribal Agent for Service of Notice list identified per Federal Register (81 FR 10887)], when known or upon receipt of verification from the Midwest Bureau of Indian Affairs of the Indian ancestry of that tribe.
- Midwest Bureau of Indian Affairs (as designated for Michigan by the Secretary of the Interior); if specific tribe is undetermined and/or multiple tribes are noticed.
- Bureau of Indian Affairs regional office specific to the tribe/state; if tribe is not located in the Midwest Bureau of Indian Affairs region.
- Notification must also be sent to the tribe(s) [Addressed to the ICWA Designated Tribal Agent for Service of Notice list identified per Federal Register (81 FR 10887)] located in the county of client residence and/or CPS complaint; if specific tribe is undetermined.
- Where there is reason to believe a child may be Indian, the caseworker must follow ICWA and MIFPA regarding that child, pending verification of the child's Indian status. All services available to any family involved with the Michigan Department of Health and Human Services (MDHHS) are available to Indian families, even when other tribal or Indian organizations are involved.

Caseworkers must request written verification of the child's membership or eligibility for membership with a tribal government if verification was not previously established or documentation is not contained in the case file. Use the DHS-120, American

Indian/Alaska Native (AI/AN) Child Case Notification, and DHS-121, Notice to Canadian Indian Tribe Concerning Court Proceeding, to obtain tribal verification.

Identification Timeline

Within **three** business days of assignment in cases where the department initiates a child custody proceeding/petition in court, caseworkers must make thorough efforts to identify any Indian child(ren).

Case Identification

Circumstances in which the court, department or other party has reason to believe a child is an Indian child includes, but are not limited to any of the following:

- Someone informs the court that the child is an Indian child.
- The residence or 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.
- Any public or state-licensed agency involved in child protection services or family support has discovered information that suggests the child is an Indian child.
- The child who is the subject of a legal proceeding gives the court reason to believe s/he is an Indian child.
- An officer of the court involved in a legal proceeding has knowledge that the child may be an Indian child.

Engaging and Collaborating with Tribes

Caseworkers should engage and collaborate with tribes at the onset of cases in which the department has initiated a child custody proceeding/petition in court to assist with verification of Indian child. Only individual tribes can verify tribal membership for an individual. Eligibility for enrollment must be determined by the Indian tribe.

The parent's and/or Indian custodian's willingness for the department to contact the tribe may not interfere with the caseworker responsibility of verifying Indian ancestry per ICWA/MIFPA.

Caseworkers should utilize the MiTEAM practice model, during engagement of family and/or Family Team Meetings (FTM) to assist with verification of an Indian child; see NAA 220, NAA 230, NAA 240.

Caseworkers should utilize the [Federal Register ICWA Designated Tribal Agents for Service of Notice List \(81 FR 10887\)](#) and/or tribal directories to identify mailing addresses and contact information for tribal ICWA staff.

Tribal directories may be found at the following websites:

<http://www.ncai.org>

<http://www.bia.gov>

For Canadian Indians:

<http://fnpim-cippn.aandc-aadnc.gc.ca/index-eng.asp>

<http://www.ainc-inac.gc.ca>

Aboriginal Affairs Office Requirements/Guidance

For Ontario Province: If a caseworker's client is registered and has a status card for a Canadian tribe/band (<http://www.aadnc-aandc.gc.ca/eng/1100100032424/1100100032428>) there are websites to every First Nation in Canada in the Aboriginal Affairs Office jurisdiction - Aboriginal Affairs Northern Development Canada (AANDC) First Nation Profiles; that the caseworkers may utilize to contact tribes directly and send the DHS-121 regarding any court proceedings or case notification.

For Ontario Province: If a client is not registered or does not know if they are registered as a member of a tribe/band, the caseworkers must contact the Aboriginal Affairs Office utilizing the DHS-121 and child and adult forms.

The Aboriginal Affairs Office will send the caseworker and the tribe/band an official response regarding tribe/band status of the child or adult pursuant to the documentation received from the department.

For Ontario Province, additional assistance may be found by contacting:

Kylee Williams
Governance, Individual Affairs, Government Relations
Aboriginal Affairs and Northern Development Canada (AANDC)
P.O. Box 1960
Brantford, ON
N3T 5W5
Telephone: (519) 751-6462
Fax: (519) 751-2666

For other Canadian provinces, caseworkers should contact the Aboriginal Affairs and Northern Development Canada (AANDC) for regional province protocol and contacts.

Caseworker Tools: [The State of Michigan ICWA/MIFPA Field Guide](#), [Michigan Tribal Service Area Map](#), and [MDHHS/SCAO Indian Child Welfare Act Posters \(Pub 5064\)](#) may assist caseworkers in identifying tribes in their county and case planning with clients. These caseworker tools and additional resources are available on the Native American Affairs (NAA) website at <http://www.michigan.gov/americanindians> for MDHHS staff and public consumers.

Indian child welfare ancestry verification and case documentation are the responsibility of the caseworker assigned to the case respectively.

MDHHS Indian outreach workers (IOW) are available in 12 counties and may assist caseworkers with the Indian ancestry verification process upon approval of an Indian Outreach Services (IOS) supervisor; see DHS-382, Indian Outreach Services Referral form.

Documentation

Caseworkers must place copies or originals (depending on court preference for original documents) of all DHS-120/DHS-121 forms and DHS120a (if applicable), the registered mail/return receipt, and any written correspondence received from the tribe in the client's case file.

Caseworkers must attach and send copies or originals (depending on court preference for original documentation) of the DHS-120/DHS-121 and DHS120a (if applicable), the registered mail return receipt documentation, and any tribal correspondence received by the department to all court reports for court files.

Document the results of all attempts to gather each of the items above in the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) reasonable efforts section of the service plan and report narrative; and all applicable ICWA details sections. See ADM 210, Notification of a Potential Referral; FOM 722-8, 722-9, 722-9D, Foster Care; PSM 712-1, CPS Intake, Initial Receipt of Complaint; JJ2 230, Service Plans. For Juvenile Justice, ICWA documentation and active efforts should be recorded in appropriate case management sections.