
**INDIAN CHILD
WELFARE ACT
(ICWA)/MICHIGAN
INDIAN FAMILY
PRESERVATION
ACT (MIFPA)
REQUIREMENTS****Exceptions to
Requirements to
File Termination
Petition**

ICWA/MIFPA applies to Indian children when considering a petition to terminate parental rights. The caseworker can make a determination not to file a termination of parental rights petition in a specific case if one of the exceptions identified below exists:

- A relative is caring for the child.
- The caseworker has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the best interest of a child; see NAA 250, Compelling Reasons.
- The caseworker has not provided services to the Indian child's family that are necessary for the safe return of the Indian child to their home.

Indian children, who are members of, or who are eligible for membership of, an Indian tribe, frequently fall within one of the exceptions to the termination of parental rights filing requirement of the Adoption and Safe Families Act (ASFA). Permanency planning hearings should take place within the time scheduled by ASFA. However, the decision concerning the permanency plan for the Indian child must continue to be governed by the requirements of ICWA/MIFPA.

**Requirements to
Terminate Parental
Rights**

No termination of parental rights may be ordered without a determination, supported by **evidence beyond a reasonable doubt, 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; **and**
- The caseworker made active efforts to provide the family with culturally appropriate remedial and rehabilitative services designed to reunify the family; **and**
- Those active efforts failed to remedy the concerns that required court intervention for the Indian family; **and**
- The Indian family is beyond rehabilitation.

Qualified Expert Witness

The termination hearing must include testimony from at least one qualified expert witness that the continued custody of the Indian child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the Indian child.

The Michigan Indian Family Preservation Act (MIFPA), MCL 712B.17(1)(a-b), has defined a QEW as the following:

(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.

Caseworkers must contact the Indian child's tribe to obtain a QEW recommendation when a child custody proceeding is imminent or expected.

Caseworkers and legal representation for department cases must assist the QEW with preparation for the court hearing (Ex: Provide sample questions that may be asked of the QEW in the hearing, meet to discuss the case, give overview of court building & parking accommodations, etc...); see State Court Administrative Office Qualified Expert Witness Testimony Training at http://courts.mi.gov/Administration/SCAO/OfficesPrograms/CWS/ChildWelfareServicesTraining/CWS%20Training%20Materials/7-CWS82213_SeriousDamageStandardandQEW.pdf and Native

American Affairs website for additional QEW resources at www.michigan.gov/americanindians.

Notice of Hearing to Terminate Parental Rights

The caseworker must send the 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), 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).
- 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) located in the county of client residence and/or children's protective services complaint; if specific tribe is undetermined.

Notification of hearing to terminate parental rights must be **received** by all those listed above at least 10 calendar days before the hearing date.

Note: A copy of the DHS-120 and return receipt must be filed in the case record and court of jurisdiction. Failure to complete proper notice may jeopardize and nullify the court proceedings.

Note: For Canadian Indian child case utilize the DHS-121 Notice to Canadian Indian Tribe Concerning Court Proceeding.

**VOLUNTARY
PROCEEDINGS FOR
TERMINATION OF
PARENTAL RIGHTS**

Parent(s) of a child believed to be Indian must be referred to an Indian child placement agency for services to voluntarily release parental rights.

If the Indian child placement agency is unable to accept the release, the procedure for release of an Indian child is the same as for any voluntary release with the following three exceptions:

**Valid Court
Release**

The release is not valid unless it is written and recorded before a judge of a court of competent jurisdiction; and is accompanied by the judge's certificate that the terms and consequences of the release were fully explained in detail, in English or in a language that the parent or Indian custodian understands, and the terms were fully understood, by the parent(s) or Indian custodian(s) (court form PCA 305, Release of Child by Parent).

**Confidentiality
Affidavit**

Either or both parent(s) may request, by affidavit, that their identities remain confidential. The court or the department must give weight to such desire in applying the preferences. However, it does not exclude members of the Indian child's extended family and members of the Indian child's tribe from consideration as adoptive applicants. The affidavit must accompany the referral to an Indian child placement agency.

**Timeframe for
Valid Release**

A release of parental rights taken within 10 days after the birth of an Indian child is not valid. A consent to the termination of parental rights cannot be executed until after the Indian child is 10 days old. If the consent is not obtained pursuant to the provisions of ICWA, the termination is not legal. The party obtaining custody cannot invoke a state court's jurisdiction to further place the Indian child and the court must order the Indian child to be returned to the parent(s), unless returning the Indian child would subject him or her to immediate danger.

Safe Delivery Act of Newborns

Note: Timeframe for Valid Release policy also applies to voluntary releases under the Safe Delivery of Newborns Act; see NAA 230, Voluntary Foster Care Placement.

Parents, however, should be encouraged to surrender a child in a safe delivery location (fire department, hospital, or law enforcement facility).

**WITHDRAWAL OF
VOLUNTARY
CONSENT TO
RELEASE**

In addition to the ICWA mandates above, the following provisions apply:

In any **voluntary** proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the parent's consent may be withdrawn for any reason at any time before the entry of a final decree of termination or adoption, and the Indian child must be returned to the parent(s).

Safe Delivery of Newborns Act

Note: Withdrawal of Voluntary Consent to Release policy also applies to an Indian child surrendered to a Safe Delivery location of Newborns Act; see NAA 230, Voluntary Foster Care Placement.

LEGAL BASIS

Adoption and Safe Families Act, 42 USC 601 et seq.

Indian Child Welfare Act, 25 USC 1901 et seq.

Safe Delivery of Newborns Act, MCL.712.1 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.