

MICHIGAN INDIAN FAMILY PRESERVATION ACT (MIFPA)

Overview of the Proposed MIFPA

The draft of the proposed Michigan Indian Family Preservation Act was a lengthy process involving a strong group of child welfare advocates from across the state of Michigan which became the consortium that included Michigan Indian Tribes, state court judges, tribal court judges, the Michigan State University Law School, Michigan Indian Legal Services, state court prosecutors, the State of Michigan Department of Human Services and other stakeholders in the child welfare community. The process started approximately a year ago with two (2) common grounds “protecting Indian children and preserving Indian families in the state of Michigan” and “the inconsistency of **not following** the federal Indian Child Welfare Act of 1978 (ICWA) causing delays that harm the children and that cause additional expenses that impacts State resources”. The proposed MIFPA will promote compliance with and will heighten the awareness of the ICWA. The passage of the MIFPA will lead to more Indian children staying in Indian communities and less expense for the State.

Some primary differences between the existing Federal Indian Child Welfare Act (ICWA) and the proposed Michigan Indian Family Preservation Act (MIFPA) are substantial enough to make a huge impact due to the promotion of compliance and the heightened awareness mentioned above, however this overview is to provide the differences in simple terms so the reader does not get bogged down with MCL (Michigan Compiled Law) and MCR (Michigan Court Rule) cites. This document is designed to layout the areas of ICWA that have been codified into a Michigan law in a friendly manner that can be easily understood.

The consortium thought it would be advantageous to include several definitions to the proposed MIFPA being:

1. To encourage consistent ICWA application “**active efforts**” is defined which also helps to clarify that active efforts, by definition, includes reasonable efforts as required for funding;
2. A term not defined in ICWA “**culturally appropriate services**” is defined in MIFPA to avoid the multiple interpretations found in past ICWA cases. This definition will create a consistent application with a cultural focus;
3. For clarification purposes “**official tribal representative**”, “**parent**”, and “**ward of the tribal court**” are defined; and
4. “**Indian child**” is more broadly defined in MIFPA to clear up any questions pertaining to “membership” in a federally recognized Tribe or “eligibility for membership” of a Tribe.

A portion of the Bureau of Indian Affairs (BIA) Guidelines for State Courts has been codified to address the Authority and Jurisdiction of the Court(s).

ICWA makes a distinction between two (2) types of proceedings; Voluntary and Involuntary Proceedings. The consortium agreed on a format in MIFPA to clarify those distinctions in light of Michigan law.

Qualified Expert Witnesses, not defined in ICWA, has its own section in MIFPA that defines and gives an order of preference when making a determination of what person is considered an acceptable Qualified Expert Witness for any party in a court case.

The Placement of Indian Children in MIFPA mirrors ICWA with additional clarification regarding good cause not to follow the order of placement preference and the court’s role when a non-compliant ICWA placement is requested. MIFPA also establishes specific good cause conditions to deviate from placement preferences and contains wording to protect Indian Children’s safety in the case of emergency removal, protective custody, or subsequent placement due to temporary domicile.

Guardianships are not specifically addressed in ICWA. The MIFPA consortium drafted a section to provide guidance to the courts when a guardianship is sought. The tribe must be noticed in either proceeding; voluntary or involuntary. This section explicitly grants the court authority to investigate a proposed involuntary guardianship and the child’s heritage and outlines report requirements when a child is determined to be an Indian. ICWA is reinforced for notice requirements for this type of proceeding. This section also addresses situations where a child is already in a guardianship and then discovered that the child could possibly be Indian.

MIFPA requires consent to voluntary placement be executed by both parents when a release or consent to adoption under the adoption code is executed. Also in order to preserve heritage and cultural ties, this section in MIFPA specifies that at any time during the adoption proceedings, the court may order visitation between the Indian child and one or more members of the child’s tribe.

MIFPA provides for consultation with the federally recognized tribes in Michigan by the Michigan Department of Human Services (Department) to establish standards and procedures for the Department’s review of MIFPA cases and to monitor compliance with ICWA and MIFPA.

For those that are interested in more details including MCL, MCR, USC, etc. cites the draft of the MIFPA is available for review. There is also a Frequently Asked Questions document and a MIFPA at a glance release. To obtain these documents contact:

Michele Corey
Michigan’s Children
428 W. Lenawee
Lansing, MI 48933
(517) 485-3500