



## What you need to know about the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act



### Child Safety and Permanency Division

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### What is the Indian Child Welfare Act (ICWA)?

The Indian Child Welfare Act is a federal law enacted in 1978. It was in response to a crisis affecting Native American and Alaska Native children, families and tribes which:

- Studies revealed that large numbers of Native American children were being separated from their parents, extended families, and communities by state child welfare and private adoption agencies; 25–35% of all Native American children were being removed, of these, 85% were placed outside of their families and communities, even when fit and willing relatives were available
- Congressional testimony documented the devastating impact that separating families was having on Native American children, families and tribes.

### What is the Minnesota Indian Family Preservation Act (MIFPA)?

The Minnesota Indian Family Preservation Act is a state law enacted in 1985. This law:

- Strengthens and expands ICWA
- Emphasizes the state's interest in supporting preservation of tribal identity of Native American children, and
- Recognizes tribes as the appropriate governments to provide direction to county social service agencies regarding best interests of tribal children.

**Important information to know if your family is involved with county social services**

### WHOM does ICWA/MIFPA apply to?

ICWA/MIFPA applies to children who have tribal lineage, and are members of an Indian tribe or eligible for membership.

### WHAT situations apply?

ICWA/MIFPA requirements apply in cases where Native American children are receiving voluntary or involuntary services from county social services such as family preservation, placement prevention, child protection, foster care, children's mental health, developmental disabilities, truancy and adoption.

### WHEN do ICWA/MIFPA provisions apply?

ICWA/MIFPA protections apply when county social services is identified as the lead agency, and also state court jurisdiction; it is not required under tribal court jurisdiction.



## Five key parts of ICWA and MIFPA

The following five parts are required by ICWA/MIFPA, but do not include all requirements. County caseworkers must complete the following five components to be in compliance with federal and state laws.

### 1. Inquiry

County social services agency staff must ask reporters of child maltreatment, child/ren, parents, Indian custodians, extended family members, and other appropriate persons, if child/ren may have tribal lineage or tribal membership.

Inquiry should be ongoing throughout opening and closing of a case. Tribal decisions about eligibility/membership are determined by child's tribe.

### 2. MIFPA and ICWA notices

#### MIFPA notice requirements

Within 24 hours of a screened in child protection case, county social services must provide notification to any known tribes by phone and email or fax. Within seven days of a child welfare case, notification must be provided to any known tribes by phone and email or fax.

A genogram form is included with MIFPA notices, also known as the family tree. It is important and helpful when family members provide information to county caseworkers for the genogram, which assists tribe(s) to determine membership eligibility.

#### ICWA notice requirements

County social services agencies must provide notifications to parents, Indian custodians, child's tribe(s), and the Bureau of Indian Affairs regional office by registered or certified mail with return receipt requested, for foster care placement and termination of parental rights proceedings.

### 3. Active efforts

Active efforts means a high level of effort that is ongoing throughout involvement of county social services to continuously involve Native American children's tribes.

Active efforts include acknowledging traditional helping and healing systems of Native American children's tribes. County social services agencies have a duty to prevent out-of-home placement and promote family reunification. If out-of-home placement does occur, active efforts must be made to ensure the return of Native American children to their families at the earliest possible time.

Requirements and responsibilities for county social services include, but are not limited to:

- Working with Native American children's tribes and families to develop an alternative plan to out-of-home placement
- Requesting participation of Native American children's tribes, and seek ongoing consultation of children's tribes
- Identifying children at the earliest point possible as an Indian child, identifying and requesting participation of their tribe throughout a case
- Requesting tribal representative to help families through case planning that uses tribal and Indian community resources
- Providing services to family members of child's parents or Indian custodians, including but not limited to financial assistance, food, housing, health care, transportation, in-home services, community support and specialized services
- Consulting with tribes about culturally appropriate family preservation strategies, and facilitating cultural connections and services for Indian children and families
- Providing appropriate services and resources to relatives who are considered the primary placement option for Indian child
- Facilitating Indian children's visits with parents, siblings, and relatives in the most natural setting.

### 4. Qualified expert witness (QEW)

County social services shall make diligent efforts to locate and present to a court a qualified expert witness designated by Native American child's tribe. QEW testimony is required for any:

- Foster care placement at an admit/deny hearing on a Child in Need of Protection or Services (CHIPS) petition to support out-of-home placement (not at an emergency placement hearing)
- Termination of parental rights (TPR) petition at a TPR hearing to support TPR.

Although it is not required best practice is to have for QEW for transfer of permanent legal and physical custody (TPLPC) hearing to support TPLPC.

### 5. Placement preferences

Tribes determine their own placement preferences by resolution, and should be considered first when county social services agencies are making placement decisions. For foster care/pre-adoption placements, the following preferences apply:

1. Member of child's extended family
2. Foster home licensed, approved or specified by child's tribe
3. Indian foster home licensed or approved by an authorized non-Indian licensing authority
4. Institution for children approved by an Indian tribe or operated by an Indian organization.

For adoptions, the following order of preference applies:

1. Member of child's extended family
2. Other members of child's tribe
3. Other Indian families.

## Reminders

- Native American children are protected under ICWA/MIFPA.
- Parents and families have rights during an open county social services case.
- The intent of Congress was to "protect the best interests of Indian children, and to promote the stability and security of Indian tribes and families." [25 U.S. Code § 1902]
- County social services agencies have responsibility to follow ICWA and MIFPA, and be in compliance with all requirements. The Minnesota Department of Human Services conducts annual reviews of county compliance.

Use this brochure as a guide to ensure ICWA/MIFPA compliance during involvement with county social services. Ask caseworker about implementing the five key parts of ICWA/MIFPA.

## Resources

The Minnesota Department of Human Services' ICWA webpage: <https://mn.gov/dhs/partners-and-providers/policies-procedures/indian-child-welfare/>

## Contact information

Send reports of Indian Child Welfare Act and Minnesota Indian Family Preservation Act [noncompliance](#), [DHS-3821 \(PDF\)](#), to the Indian Child Welfare unit email: [DHS.ICWA.MIFPA@state.mn.us](mailto:DHS.ICWA.MIFPA@state.mn.us).



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