

Pokagon Band of Potawatomi
Pokégnek Bodéwadmik



Michigan Indian Family
Preservation Act: First Steps

SCAO Child Welfare Services Training 3.8.13
Annette Nickel, Presenting Officer
Pokagon Band of Potawatomi


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WHY DO WE NEED MIFPA?

Why?

- Makes broad provisions of the Indian Child Welfare Act (ICWA) more relevant to Michigan.
- Provides consistency in application of ICWA and MIFPA.
- Clarifies the ICWA provisions in the context of Michigan statutes and court rules.

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Why?

- Recognizes the government-to - government relationship between the State of Michigan and sovereign American Indian governments.


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WHEN DOES THE ACT APPLY?


Definition Of An Indian Child

- The MIFPA defines an Indian child more broadly:
- §712B.3(k): “Indian child” means an unmarried person who is under the age of 18 and is either of the following:
 - (i) A member of an Indian tribe.
 - (ii) Eligible for membership in an Indian tribe as determined by that Indian tribe.

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Tribal Citizenship/Membership Considerations

- Membership is determined by the Tribe.
- Generally found in Tribe’s Constitution.
- May be based on blood quantum.
- May be based on ancestry/lineage.
- A Tribe may have closed its membership or partially closed its membership.
- MIFPA (like ICWA) is not limited to citizens of Michigan Tribes.

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Tribal Citizenship/Membership Considerations § 712B.9(3)


- “The department shall actively seek to determine whether a child at initial contact is an Indian child.”
- Is it enough to ask, “do you have any Indian heritage”?

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Tribal Citizenship/Membership Considerations § 712B.9(3)

- “If the department is unable to make an initial determination as to which Indian tribe or tribes a child brought to its attention may be a member, the department shall exercise due diligence to contact the Indian tribe or tribes in writing so that the tribe may verify membership or eligibility for membership.”


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Tribal Citizenship/Membership Considerations § 712B.9(3)

- “If the department is unable to make an initial determination as to which tribe or tribes a child brought to its attention may be a member, the department shall, at a minimum, contact in writing the tribe or tribes located in the county where the child is located and the secretary.”


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Tribal Citizenship/Membership What and How to Ask


- May need to go beyond “Indian Heritage.”
- May need to ask “why” questions.
- May need to obtain names of other relatives.
- Child may be eligible for citizenship in more than one Tribe.

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Notice – How and to Whom?

- §712B.9 Notice
 - Registered Mail
 - Child’s Tribe
- (However – nothing prohibits contact by telephone in addition to written contact via registered mail).
- Contact as soon as possible at the earliest stage possible.

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Notice – How and to Whom?

- §712B.9 Notice
- If child’s Tribe is unknown:
- To the “secretary” (§712B.3(u))
- AND
- “contact in writing the tribe or tribes located in the county where the child is located and the secretary”

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Active Efforts

- Active Efforts §712B.3(a)(i) – (xii)
- Specific list of items.
- Not an exclusive list.
- Many other things can be done.
- Factual determination.

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Active Efforts- Contact

- §712B.3 Active Efforts
- Once Tribe is identified, contact with Tribe and soliciting advice from Tribe can make active efforts fall into place more easily.
- Tribe may have services to suggest
- Tribe may be able to assist with identification of a qualified expert witness.

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Active Efforts - Contact

- §712B.3 Active Efforts
- Tribe is not required to make active efforts.
- Burden of proving active efforts is not on the Tribe.
- Contact with the Tribe may be considered active efforts §712B.3(a)(vi).

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ADDITIONAL RESOURCES

- Indian Child Welfare Act, 25 USC 1901 et seq.
- Bureau of Indian Affairs: Guidelines for State Courts: Indian Child Custody Proceedings, Fed. Reg. Vol. 44, No. 228 November 26, 1979.
- Michigan Judicial Institute: Child Protection Bench Book, 4th Edition.
<http://courts.mi.gov/education/mji/Publications/Documents/Child-Protective-Proceedings.pdf>
- State Court Administrative Office: Indian Child Welfare Act of 1978: A Court Resource Guide (2012)
- <http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/cws/ICWACResourceGuide.pdf>

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ADDITIONAL RESOURCES

- Native American Rights Fund (NARF): A Practical Guide to the Indian Child Welfare Act. www.narf.org
- *In re Morris*, 491 Mich. 81, 815 NW 2d 62 (2012)
- Bureau of Indian Affairs list of Federally Recognized American Indian Tribes see Fed. Register Vol 77, No. 155 (August 10, 2012). www.bia.gov/cs/groups/mywccsp/documents/text/idc-020733.pdf

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