

American Indian Child Placement/Evidence Standards Chart

Note Jurisdiction Requirements in MCR 3.905

Initial & Subsequent Removal of an Indian Child from the Home	
<p style="text-align: center; color: #0070C0;">Emergency Situation</p> <p>MCR 3.963 Protective Custody of Child MCR 3.965 24 Hour Preliminary Hearing MCR 3.974(C) Emergency Removal MCR 3.967(A) Indian Child Removal Hearing* *May be combined with another hearing</p>	<p style="text-align: center; color: #0070C0;">Nonemergency Situation</p> <p>MCR 3.965 Preliminary Hearing MCR 3.974(B) Hearing for Out-of-Home Placement MCR 3.967(B) Indian Child Removal Hearing* *May be combined with another hearing</p>
Resides/Domiciled on Reservation but temporarily off-Reservation	Not Residing/Domiciled on Reservation
Removal only to prevent imminent physical damage or harm to the child in an emergency situation. MCL 712B.7(2)	Temporary removal if the child is at substantial risk of harm or in surroundings that present an imminent risk of harm. MCL 712A.14a(1), MCL 712A.14b
<p>Burden of Proof for Removal Hearing: Clear and Convincing Evidence*</p> <ol style="list-style-type: none"> 1. “Active efforts” were made to prevent the removal, and those efforts were unsuccessful, AND 2. Services designed to prevent breakup of Indian family have been furnished, AND 3. Continued custody of child by parent or Indian custodian is likely to result in serious emotional or physical damage to the child <p><i>Qualified Expert Witness testimony is required at Removal Hearings. MCL 712B.15(2), MCR 3.967(D)</i></p>	
<p>* NOTE: Burden of proof for removal does <u>not</u> apply to an Ex Parte Order for Protective Custody or 24 hour Emergency Removal Hearing; but it does apply for <i>continued removal</i> at the subsequent removal hearing; AND following the preliminary hearing, any future removal of an Indian Child <u>must</u> proceed according to the same process outlined above.</p>	
Jurisdiction & Other Hearing Types (Except Termination)	
<p>Evidentiary Standard and Burden of Proof is by a Preponderance of the Evidence for the following proceedings:</p> <ul style="list-style-type: none"> • Adjudicative Hearing/Trial • Initial Dispositional Hearing • Dispositional Review Hearing • Permanency Planning Hearing <p style="color: #0070C0;">NOTE: Findings on “Active Efforts” should be made at each of these hearings.</p> <p>Best Practice Tip: Applying a higher standard of clear and convincing evidence at a non-jury adjudication trial would align with the underlying goals of MIFPA, although application of a higher standard is not required by current law.</p>	
Termination of Parental Rights	
<p>Evidentiary Standard and Burden of Proof for an Indian child is Beyond a Reasonable Doubt for all Termination proceedings:</p> <ul style="list-style-type: none"> • Termination: At Initial Disposition • Termination: Due to Changed Circumstances • Termination: Due to Time in Foster Care <p>Burden of Proof: Evidence Beyond a Reasonable Doubt (higher burden than clear and convincing evidence)</p> <ol style="list-style-type: none"> 1. <u>Test:</u> The court is satisfied that “Active Efforts” to prevent the breakup of the Indian Family have been made and those efforts were unsuccessful. MCR 3.977(G)(1) 2. <u>Test:</u> Continued custody will likely result in <i>serious emotional or physical damage</i> to the child. Must include testimony of Qualified Expert Witness. MCL 712B.15(4), MCR 3.977(G)(2) <p>The Court must first establish grounds for termination of parental rights pursuant to MCL 712A.19b and MCR 3.977. The additional requirements of the Indian Child Welfare Act and the Michigan Indian Family Preservation Act must then be applied.</p>	

Michigan Indian Family Preservation Act Definitions MCL 712B.3

1. “Indian Child” (MCL 712B.3(k)) 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.

2. “Active Efforts” (MCL 712B.3(a)) means actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the Indian child with the Indian family. Active efforts require more than a referral to a service without actively engaging the Indian child and family. Active efforts include reasonable efforts as required by title IV-E of the social security act, 42 USC 670 to 679c, and also include, but are not limited to, doing or addressing all of the following:

- (i) Engaging the Indian child, child’s parents, tribe, extended family members, and individual Indian caregivers through the utilization of culturally appropriate services and in collaboration with the parent or child’s Indian tribes and Indian social services agencies.
- (ii) Identifying appropriate services and helping the parents to overcome barriers to compliance with those services.
- (iii) Conducting or causing to be conducted a diligent search for extended family members for placement.
- (iv) Requesting representatives designated by the Indian child’s tribe with substantial knowledge of the prevailing social and cultural standards and child rearing practice within the tribal community to evaluate the circumstances of the Indian child’s family and to assist in developing a case plan that uses the resources of the Indian tribe and Indian community, including traditional and customary support, actions, and services, to address those circumstances.
- (v) Completing a comprehensive assessment of the situation of the Indian child’s family, including a determination of the likelihood of protecting the Indian child’s health, safety, and welfare effectively in the Indian child’s home.
- (vi) Identifying, notifying, and inviting representatives of the Indian child’s tribe to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and actively soliciting the tribe’s advice throughout the proceeding
- (vii) Notifying and consulting with extended family members of the Indian child, including extended family members who were identified by the Indian child’s tribe or parents, to identify and to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.
- (viii) Making arrangements to provide natural and family interaction in the most natural setting that can ensure the Indian child’s safety, as appropriate to the goals of the Indian child’s permanency plan, including, when requested by the tribe, arrangements for transportation and other assistance to enable family members to participate in that interaction.
- (ix) Offering and employing all available family preservation strategies and requesting the involvement of the Indian child’s tribe to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child’s tribe.
- (x) Identifying community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child’s family with special needs, and providing information about those resources to the Indian child’s family, and actively assisting the Indian child’s family or offering active assistance in accessing those resources.
- (xi) Monitoring client progress and client participation in services.
- (xii) Providing a consideration of alternative ways of addressing the needs of the Indian child’s family, if services do not exist or if existing services are not available to the family.

*** NOTE: Because the statutory definition of active efforts incorporates the federal definition of reasonable efforts, it is not necessary for courts to make both reasonable and active efforts findings for Title IV-E eligibility.**