


MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

**2020 Indian Child Welfare Act (ICWA)
Michigan Indian Family Preservation Act (MIFPA)
Training**

OWDT Child Welfare Training Institute *rev 2/13/20*

Compassion-Protection-Independence


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WELCOME!

- Welcome to ICWA training!
- Introductions
- Land Acknowledgement




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Objectives

- Recognize historical background leading to ICWA and MIFPA
- Identify actions needed to manage ICWA cases
- Be able to recognize culturally appropriate services

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 **ICWA Quiz**

1. True or False: Active Efforts are only required upon verification from a Tribe that a child is a member or eligible for membership?
 1. **False**
2. NAA policy requires the DHHS 120 be sent at what point in a child welfare case?
 1. **When petitioning court**
3. True or False: If a child lives on the reservation, the Tribe has Exclusive Jurisdiction?
 1. **True**


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 **ICWA/MIFPA**

Why ICWA and MIFPA?



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 **ICWA – A Brief History**

- Columbus arrives in New World?
 - **1492**
- Population of Native American Indians?
 - **12-15 million**
- 300 years of expansion/colonization and “Manifest Destiny” by the late 1800’s left the Native population at?
 - **300,000**
- Dilemma regarding Native’s facing U.S. leaders in late 1800’s?
 - **What to do about the “Indian Problem”**
- One possible answer?

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 **Historical Trauma**

- **The Wellbriety Journey Video**
- www.nicwa.org
- **The Wellbriety Journey to Forgiveness**
 - <http://www.youtube.com/watch?v=vZwF9NnQbWM>
- **The Canary Effect:**
 - <http://topdocumentaryfilms.com/canary-effect/>

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 **What was life like for Native Americans?**

- What was life like **before** Columbus discovered the New World? *Prior to 1492*
- What are some of the changes that occurred in Native American Culture **after** Columbus arrived 1492-1878?
- What were some of the changes that ICWA helped to bring about for Native Americans? *1978-present*


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 **Now What?**

- Three step process:
 - Identification
 - Verification
 - Collaboration




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 **First step**

- **First Step** – Identification of the child “at the earliest point of contact.”
- Ask the question in a culturally competent manner
 - “Are you or your child affiliated with any American Indian Tribe”?
 - Document this conversation in SACWIS
- Possible Answers...
 - No
 - Yes
 - Maybe or vague answer


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 **Vague Answer**

- You have asked the family if they have any affiliation with an American Indian Tribe and they respond: “Well, we might have as I believe my great, great grandmother was Cherokee.”
- How should you respond?




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- If yes or vague answer:
 - Active Efforts & Verification via DHHS 5598
- Document:
 - SW contacts, and ICWA tab, copies or originals to court

MISACWIS TRAINING SITE




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What if the Tribe is undetermined?

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- If tribe is undetermined, the DHHS 120 and DHHS 5598 is sent to the BIA-Midwest Region as well as to the Tribe or Tribes located in the county of client residence and/or complaint.



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Verification via Federal Register

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- <https://www.federalregister.gov/documents/2019/05/09/2019-09611/indian-child-welfare-act-designated-tribal-agents-for-service-of-notice>
- You can copy the link above from either the DHHS 120 or the DHHS 5598



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Collaboration

- What does it look like?
 - Invite to FTM's/ case conferences and all court hearings
 - Call to provide regular updates
 - Involve the Tribe in creating a service plan
 - Ask Tribe for guidance – active efforts
 - Identify culturally appropriate services
- Create a Cultural Plan for the child – DHHS 120C



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Culturally Appropriate Services

- Using the DHHS 120 C “American Indian Child Welfare Cultural Plan” create a plan



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ICWA/MIFPA Key Protections

- Active Efforts
- Placement Preferences
- Higher Legal Threshold
 - FC=Clear and Convincing Evidence
 - TPR=Evidence Beyond Reasonable Doubt
 - Qualified Expert Witness (QEW)
- Tribal Intervention



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Active Efforts

- Active efforts: affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.
- *Active Efforts group activity*




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Placement Priorities

<ul style="list-style-type: none"> • Foster Care <ul style="list-style-type: none"> ○ Extended family. ○ Foster home licensed, approved or specified by child's tribe. ○ Indian foster home licensed or approved by DHS. ○ Facility for children approved by an Indian organization w/services to meet the child's needs: <i>Binogii</i> 1.800.726.0093. 	<ul style="list-style-type: none"> • Adoption & Pre-Adoptive Placement <ul style="list-style-type: none"> ○ A member of the child's extended family. ○ A member of the child's tribe. ○ An Indian Family – any Tribe
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Qualified Expert Witness (QEW)

<ul style="list-style-type: none"> • A member of the Indian child's tribe or approved by the tribe that will speak to the child rearing practices/customs of that particular tribe and likelihood of serious harm or damage to the child. • Provide context • Required for FC placement & TPR 	<ul style="list-style-type: none"> • Contact Tribe to request • Burden is on petitioner • Only 1 QEW required although there could be additional QEW's • Should not be the caseworker for the child or employee of the agency seeking to remove
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 **Identification...**

- NAA 210:
 - Within **three** business days of assignment in cases where the department initiates a child custody proceeding/petition in court, caseworkers must make thorough efforts to identify any Indian child(ren).
- Can I have Court?




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 **Emergency Removals**


- ICWA/MIFPA permit
- Emergency removals: Preliminary Hearing must be held within 24 hours
- Removal Hearing must be held within 14 days




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 **Notification of Court Proceeding**


- ICWA requires that the DHHS 120 and DHHS 5598 be sent to a child's parents or Indian custodian and the child's tribe or the BIA for every court hearing.
- Timeframe to mail?
 - **3 Business days of initiating court involvement**
- Notice of court hearing must be provided at least 10 calendar days before the date of the hearing.
- What type of mailing is required?
 - **Registered mail with Return Receipt**




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 **CPS to Foster Care**

- Foster care workers should inquire about possible American Indian Ancestry at the beginning of the foster care case.
- What if foster care gets a different answer from CPS?




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 **Scenario**

- The foster care worker meets the birth parents at their home to provide information and schedule a FTM. The worker asks if either parent has any American Indian Tribal affiliation. The Birth mom states that she does not. The birth father indicates that he has tribal affiliation with a Tribe in California. In checking the records, the birth father did not report this to the CPS worker. Now what do you do?


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 **ICWA/MIFPA Mandates**

ICWA	MIFPA
<ul style="list-style-type: none"> • Definition of Indian Child • Exclusive Jurisdiction • Placement Priorities (25 USC § 1915 [a-b]) • Active Efforts (25 USC § 1912) <i>not defined</i> • Qualified Expert Witness (25 USC § 1912) <i>Not defined</i> 	<ul style="list-style-type: none"> • Does not have to be a biological child of Tribal member MCL 712B.3 • Same as ICWA + Tribal Ward can be non-Indian MCL 712B.7 • Placement Priorities (MCL 712B.23) The court addresses placement priorities at each hearing until met. • Active Efforts (MCL 712B.3) MIFPA defines Active Efforts & Burden of Proof • Qualified Expert Witness (MCL 712B.17) MIFPA defines preference

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Indian Ancestry Verification & Notice to Tribe (Continued)

- **Indian child:**
 - “Biological” is removed from Indian child definition in MIFPA Section 3 [k][i-iii]
 - Saginaw Chippewa Indian Tribe has an ICWA Agreement with the department that recognizes descendent children.
- **Notice:**
 - MIFPA Section 9 includes *In re Morris* requirements:
 - × **Original/Copies (based on court discretion) of notice (DHHS-120) and registered mail return receipt; along with all correspondence from the BIA and tribe(s) must be attached to reports sent to the court.**
 - × **If tribe is undetermined, the DHHS 120 is sent to the BIA - Midwest Region as well as to the Tribe or Tribes located in the county of client residence and/or complaint.**

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NAA/MDHHS Forms

- DHHS 120 - AI/AN Court Hearing Notification (Rev 07/19)
- DHHS 120a- ICWA/MIFPA Multiple Document Mailing Cover Sheet
- DHHS 120b - Transfer to Tribal Agency/Court
- DHHS 120c - AI/AN Child Welfare Cultural Plan
- DHHS 121a- American Indian Descendant Child Welfare Case Notification
- DHHS 5598 - American Indian Child Ancestry Verification (Rev 07/19)

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Tribal Jurisdiction & Tribal Intervention

- Tribes have a right to intervene at any point in time in child welfare proceedings.
- Tribal Jurisdiction may be *exclusive* or *concurrent* to the state jurisdiction.
- Exclusive jurisdiction
 - Child resides on Reservation or case in Tribal Court
- CPS – child on reservation – restrictions apply unless after hours agreements (PSM 716-1)
- These Tribes have after hours agreements: Sault Ste. Marie Chippewa Tribe, Keweenaw Bay Indian Community & Lac Vieux

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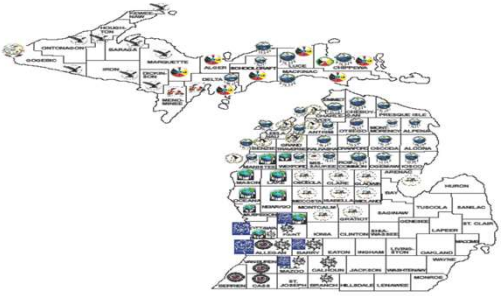
BCAL Tribal Home Verification (BCAL 120a)

- In order for a placement to be considered an Indian home according to ICWA/MIFPA, the home must be verified by the tribe in a similar manner as Indian ancestry verification for the child.
- Utilize DCWL120a.



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Native American Affairs (NAA)
Michigan Tribal Service Area Matrix
(Map Reference)
Counties Included in Tribes' Service Delivery Area




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Resources

- **Web Links:**
 - Caseworker Tools & Resources:
 - <http://www.michigan.gov/americanindians>
 - <http://www.narf.org>
 - <http://www.nicwa.org>
 - <http://courts.mi.gov/administration/scao/Pages/default.aspx>
 - Tribal Directories:
 - <http://www.bia.gov>
 - <http://www.ncai.org>
 - [NAA Policy – see Policy Manuals; DHS public/intranet](#)
 - [QUICWA Performance Checklist](#)
 - [ICWA Poster](#)
 - [NAA Tribal Service Area Maps](#)
 - [ICWA Field Guide](#)
 - [Indian Outreach Services Map](#)
 - [Practical Guide to the Indian Child Welfare Act \(NARF\)](#)
 - [ICWA Bench book \(SCAO\)](#)

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Questions?

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Native American Affairs

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Thank you for your participation!

YOUR CONTINUED EXCELLENCE IN CHILD WELFARE IS OUR GOAL!

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