



Disproportionate Minority Contact of  
**American Indians/  
Alaska Natives**  
in the Child Welfare System of Michigan

## Understanding the Law and Respecting Cultural Differences

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### fast facts

- The State Court Administrative Office and Michigan Department of Human Services (DHS) are working collaboratively to tackle the state's need to ensure compliance with the Indian Child Welfare Act of 1978 (ICWA).
- DHS is proactively training caseworkers to identify an "Indian child" quickly and efficiently, provide culturally appropriate services, and work jointly with the courts to preserve the "Indian family."
- The Michigan Supreme Court recently issued its first substantive ICWA interpretation and opinion in July 2009, providing long-awaited guidance (*In re Lee*, 483 Mich 300 [2009]).

*“In 2005 American Indian/Alaskan Native children were more likely than children of other races/ethnicities to be confirmed as victims of neglect (65.5 percent) and were least likely to be confirmed as victims of physical abuse (7.3 percent).”<sup>1</sup>*

The Indian Child Welfare Act of 1978<sup>2</sup> (ICWA) was enacted by Congress to address the widespread removal of American Indian children from their tribal lands and families. The intent behind this federal law is clear; it was conveyed “that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources.”<sup>3</sup> Congress also noted “that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children....”<sup>4</sup> The State Court Administrative Office (SCAO) and the Michigan Department of Human Services (DHS) share the common goal of consistent statewide compliance with ICWA combined with comprehensive and culturally sensitive services. DHS and the state courts are conducting an ICWA self-evaluation because of lapses in compliance that were identified within both entities.

DHS and the courts identified examples of common problems regarding ICWA compliance, including:

- Failure to identify Native American children and families and notify tribes early in the child protection process
- A lack of culturally appropriate services to maintain a child’s tribal ties
- Lack of knowledge by judges, referees, and court staff of ICWA’s requirements (e.g., notice sent to the tribe, where to send the notice if the tribe cannot be identified, who bears responsibility for providing “active efforts” in proceedings with no trained DHS caseworkers assigned, etc.)

These result in:

- Delays in permanency because of late or no notification to the tribes<sup>5</sup>
- Adoption reversals due to a lack of culturally appropriate services and ICWA-compliant placements
- Inadequate efforts to reunify the family because of a misunderstanding of the difference between “active efforts” as required under ICWA and reasonable efforts required under state law

Questions arising from local DHS staff, jurists, and other court personnel as well as recent caselaw have led both SCAO and DHS to proactively collaborate to clarify ICWA requirements.

SCAO, with leadership and support from Michigan Supreme Court Justice Michael F. Cavanagh, is focused on ICWA compliance by state courts in Michigan. The Child Welfare Services Division (CWS) of SCAO organized an ICWA committee<sup>6</sup> in 2008 to create a Court Resource Guide to provide state courts with a detailed analysis of ICWA, practical application tips, and implementation

recommendations. The guide identifies the nuances of the federal law that have caused confusion for state courts. For example, ICWA applies to all “child custody proceedings” including “foster care placements.”<sup>7</sup> Confusion arises because these ICWA “foster care placements,” by definition under the federal law, include full and limited guardianships ordered under the Estates and Protected Individuals Code.<sup>8</sup> Michigan law does not recognize these guardianships as “foster care placements.”

Removal and termination of parental rights standards differ between ICWA and Michigan law. ICWA requires heightened standards for both. Under ICWA, a child can be removed from his parents only after clear and convincing evidence, along with testimony from qualified expert witnesses that the parents’ continued custody will result in serious emotional or physical damage to the child.<sup>9</sup> This heightened ICWA standard differs from Michigan’s child removal standard of “probable cause” under MCL 712A.13a(2).

Likewise, an Indian child’s parental rights may not be terminated without proof beyond a reasonable doubt that continued custody will result in serious emotional or physical damage.<sup>10</sup> Michigan’s standard for termination is the lower burden of clear and convincing evidence under MCL 712A.19b(3). Additionally, ICWA requires Indian children to be placed in specific culturally appropriate adoptive or foster care locations, unless the child’s tribe has a different placement preference.<sup>11</sup> Culturally appropriate placements for non-Indian children, while preferred by DHS, are not mandated by law.

These different requirements can be easily overlooked by DHS and court staff if they are not trained to know how to identify critical ICWA issues. Therefore, the Court Resource Guide is a tool for Michigan courts to trigger the appropriate ICWA analysis and consider the federal law when placing an Indian child outside the parental home.<sup>12</sup>

SCAO’s CWS division receives federal funding through the Court Improvement Program and the Michigan Governor’s Task Force on Children’s Justice, chaired by Michigan Supreme Court Justice Elizabeth Weaver, to provide ongoing professional education to those working within the child welfare services field. These trainings encompass courts, tribes, and social services agencies. The federal funds will be the basis for in-depth regional trainings on the new guide. Counties will be requested to send an “ICWA team” to a training in their geographic region. The team will consist of a state court judge, prosecutor, DHS Indian outreach worker,

children's protective services worker, foster care and adoption specialists, lawyer guardian ad litem, court-appointed parent representative, and the tribal counterparts of these positions for those counties where tribes are located or have a significant number of members residing. While receiving a practical education on how to use the guide, these teams will work toward a common understanding of ICWA's requirements and attempt to solve potential barriers in their community based on specific fact scenarios.

Other SCAO endeavors included a two-day ICWA forum in Mt. Pleasant held in October 2008. The goal of the forum, hosted by the Saginaw Chippewa Indian Tribe, was to better serve Native American families through addressing the importance of tribal sovereignty, cultural awareness, traditions, maintaining tribal ties, and the consistent application of ICWA throughout our state court and social services systems. SCAO is also involved in a data-sharing project with DHS to ensure compliance with ICWA by both entities. The federal Data Collection and Analysis Grant, managed by CWS, evaluates the welfare of "Indian children" pursuant to ICWA as part of the identified performance measures under evaluation.<sup>13</sup>

Mirroring the SCAO ICWA initiatives, DHS is "focused on ICWA compliance and cultural knowledge and understanding" through the Office of Native American Affairs (NAA). NAA acts as a liaison between all cradle-to-grave social services' initiatives as they roll out in Michigan's tribal communities. NAA provides advocacy, training, ICWA profiling, service enhancement, and tribal consultation to assist with the care and supervision of American Indian children and families in need of social service intervention according to federal and state laws<sup>14</sup> and executive orders.<sup>15</sup>

To combat disparity of services and disproportionate contact of American Indian children with the child welfare system, the DHS Indian Child Policy Group<sup>16</sup>—a group of DHS, tribal, and private agency child welfare experts—convened from early 2007 to mid-2008 to compile the NAA Policy Manual.<sup>17</sup> The manual highlights Indian child welfare policy and Indian Outreach Services (IOS) protocol for Michigan. Before the manual's creation, limited Indian child welfare policy instructions were located in separate DHS policy manuals; IOS policy was not previously for-

malized. Published October 2008, the NAA manual consists of four components:

- (1) IOS—addressing specialized services available for American Indian families in Michigan to prevent family crises from escalating, including, but not limited to, providing active efforts to prevent removal of an Indian child from his or her biological family;
- (2) NAA—addressing the ICWA guidelines and policy regarding Child Protective Services, foster care, adoption, juvenile justice, and guardianships for American Indian children/families in Michigan;
- (3) Native American Glossary—a reference guide of terminology unique to Indian child welfare; and
- (4) Tribal Agreements—a manual consisting of agreements between Michigan tribes and the state concerning care and supervision and after-hour placement arrangements.

**ICWA requires Indian children to be placed in specific culturally appropriate adoptive or foster care locations, unless the child's tribe has a different placement preference. Culturally appropriate placements for non-Indian children, while preferred by DHS, are not mandated by law.**



Furthermore, an ICWA training was incorporated into the Child Welfare Training Institute (CWTI) New Worker Institute's training curriculum<sup>18</sup> to ensure safety, permanency, and well-being outcomes for American Indian children and families and compliance with the federal law. ICWA training is available for DHS staff at all levels of service provision as well as other state, tribal, and private agency providers that enroll in CWTI New Worker and Supervisor Institutes. A three-hour ICWA training illustrating U.S. and tribal law; an introduction to cultural competency (Michigan specific); the historical significance, importance, and relevance of ICWA for American Indian children and families and child welfare professionals; and a DHS NAA policy overview are provided to participants. The CWTI is also endeavoring to expand training capacity and professional development seminars beyond the current ICWA training that will enhance skill sets and provide culturally competent models for professionals working with American Indian families.

An integral part of the success the state shares in the protection of American Indian children and families in care includes the Michigan Tribal State Partnership (TSP). The TSP is a collaborative of Michigan tribal communities, DHS, SCAO, and private agencies whose purpose is to actively support the state's compliance with ICWA. The team advocates for and enhances the well-being and preservation of American Indian families. Established in 1995, the TSP began as an implementation team of the 1989 Native American Task Force. Originally, the task force was comprised of Native American community leaders, Department of Social Services administrators and service providers, and representatives of human service organizations. The goal of the task force was to make recommendations to then DHS Director Patrick Babcock that would impact the delivery of services to American Indians with consideration of tribal sovereignty and treaty rights. The outcome of the Native American Task Force resulted in a 167-page report with 27 recommendations proposing service delivery innovations for American Indians in Michigan.<sup>19</sup> In 1995, Mr. Babcock subsequently initiated the implementation team to ensure integration of those 27 recommendations to state services for American Indians.

Over the past 15 years, the implementation team evolved into what is commonly referred to as the TSP. Membership has fluctuated, always including tribes and DHS, but also the Michigan Indian Child Welfare Agency, urban Indian organizations, Inter-Tribal Council, Michigan Indian Commission, SCAO, and Michigan Indian Legal Services. The priorities are:

- Compliance with ICWA
- Identification of American Indian children and families
- Provision of culturally competent services to American Indian families
- State department inclusion, collaboration, and partnering with tribes

The TSP meets quarterly in St. Ignace.<sup>20</sup> DHS Director Ismael Ahmed recently requested an urban Indian partnership venue to assist urban Indian organizations with their collaborations with the TSP and state. By providing a meeting closer to customer locale, DHS and sister state agencies are able to address point-of-entry concerns for American Indian clients in urban areas. Urban Indian partnership meetings are held semi-annually in Detroit, Grand Rapids, and Lansing.<sup>21</sup>

Beyond the implementation of DHS training and recommendations made by the TSP to address the evidence of high rates of American Indian children in care, an array of culturally competent initiatives are also underway at SCAO, DHS, and peripheral agencies. These include:

- Race Equity Initiative (DHS)—spotlighting racial disparity and institutional racism<sup>22</sup>
- Children of Color Initiative (Early Childhood Investment Corporation)—highlighting unique perspectives of populations ages zero to three and caregivers for special populations, including American Indians<sup>23</sup>
- Disproportionate Minority Contact Forum (SCAO)—investigating the perpetuation of cycles of contact<sup>24</sup>

Each project is taking a hard look at the system changes required to reduce the disproportionate contact of American Indians with the child welfare system in Michigan.

DHS and SCAO are creating a cross-branch collaborative system of identifying strengths and weaknesses in our child welfare system as they pertain to Native American children. The goal of both agencies is to improve compliance with the federal law and expand cultural competence and awareness. Future steps for both organizations include continuing education, improved data collection and analysis, and continued inter-agency collaboration to proactively identify issues involving American Indian children before they become entrenched in the child welfare system. ■

**There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children.**





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## FOOTNOTES

1. National Indian Child Welfare Association, *Child Abuse and Neglect and American Indians: Overview and Policy Briefing* (April 14, 2008), p 3, available at <<http://www.icctc.org/NICWA%20report2.pdf>>. All websites cited in this article were accessed December 11, 2009.
2. 25 USC 1901 through 1963.
3. 25 USC 1901(2).
4. 25 USC 1902(3).
5. 25 USC 1914 states that any Indian child, parent, or tribe may petition a court to invalidate actions upon a showing that ICVWA was violated.
6. Committee membership included tribal chairs, judges, legal counsel, and social services workers. Circuit and probate court judges, referees, court administrators, probate registers, DHS staff, Michigan State Police personnel, and prosecutors were also among the committee membership. This approximately 60-member committee met four times, from September 2008 to May 2009.
7. 25 USC 1903(1)(i).
8. *Id.*
9. 25 USC 1912(e).
10. 25 USC 1912(f). Termination also requires testimony of a qualified expert witness.
11. 25 USC 1915.
12. The ICWA does not apply to custody proceedings in which either of the parents will be awarded custody of the child.
13. Staff at DHS and SCAO identified 62 performance measures ranging from due process, timeliness, safety, permanency, and well being. "Indian children," as defined by 25 USC 1903(4), are the focus of several specific performance measures.
14. Michigan Department of Human Services, Tribal Consultation Policy, available at <<http://www.michigan.gov/americanindians>>.
15. Office of the Governor, Executive Order 2004-05, available at <<http://www.michigan.gov/americanindians>>.
16. DHS Indian Child Policy Group: Jocelyn Vanda, DHS Interagency & Community Services Director; Paul Cloutier, DHS Native American Affairs Director; Kelly Jorgensen, DHS FIS Baraga County; John Keller, DHS Family-to-Family Coordinator Isabella County; Stacy Moyler, DHS Region IV Analyst; Tamela Rusch, DHS Clinical Social Work Manager Wayne County; Marie Walker, Licensing Consultant Traverse City; and Douglas Woodard, DHS Office of Inspector General (OIG) Regulation Manager Ingham County.
17. Michigan Department of Human Services, *Native American Affairs Manual* (July 1, 2009), available at <<http://www.mfia.state.mi.us/olmweb/ex/naa/naa.pdf>>.
18. Michigan Department of Human Services, Child Welfare Training Institute (CWTI) Training Roster & Registration <<https://jjolt.famcare.net/otphelp.htm>>.
19. Michigan Department of Social Services, Native American Task Force, *Native American Task Force Report: Empowering Native People* (1990).
20. A Tribal State Partnership 2009 Meeting Schedule is available on the Native American Affairs website <<http://www.michigan.gov/americanindians>>.
21. An Urban Indian Partnership 2009 Meeting Schedule is available on the Native American Affairs website <<http://www.michigan.gov/americanindians>>.
22. Michigan Department of Human Services, *Equity: Moving toward Better Outcomes for All of Michigan's Children* (March 2006), available at <[http://www.michigan.gov/documents/dhs/EquityReport\\_182525\\_7.pdf](http://www.michigan.gov/documents/dhs/EquityReport_182525_7.pdf)>.
23. Early Childhood Investment Corporation (ECIC), Children of Color Initiative, available at <<http://greatstartforkids.org>>.
24. This two-day training was held at the Kellogg Center in East Lansing, Michigan, on October 5 and 6, 2009.