

STATE OF MICHIGAN ICWA/MIFPA ACTIVE EFFORTS & PETITION WRITING JOB AID



Michigan Department of Health and Human Services (MDHHS),
Native American Affairs (NAA)
Court Improvement Program (CIP)

What are Active Efforts?

MCL 712B.3

- (a) “Active efforts” means actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the 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 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.
- Guidance on accurate active efforts in petitions or on the record:
- 1) Active efforts are the petitioner’s (department or private agency foster care provider) burden of proof in court; not the tribe’s.
 - 2) Indicating “CPS services were provided” is not descriptive and does not clarify active efforts in a petition or on the record in court. Rather a worker should itemize CPS caseworker service delivery or offer/refusal of CPS/other services and outcome of services for client (particularly those active efforts cited in MCL 712B.3 or those the tribe indicates are considered active efforts for their tribe that may not be found in MIFPA).

- 3) **Case example:** Single bio-Mom, substance abuse (heroin), heating shut off notice, dirty home, lack of proper food in the home, unsafe sleep, lack of proper supervision, lack of reliable transportation, and failure to thrive; i.e., low weight/height ratio for infant/toddler and/or malnutrition. “Active efforts” examples for this client include, but is not limited to:
- a. Intensive in-home services for infant mental health (IMH) were provided/offered for 6 weeks at twice weekly for 2-hour intervals; client was non-participatory for 9 of the 12 scheduled sessions. The IMH worker (name) indicated that attendance for 3 sessions would not allow IMH to consider services complete and/or client did not demonstrate skills to maintain the safety of the child in the home.
 - b. Worker offered/provided transportation and bus passes to substance abuse services (drug screens, Alcoholics/Narcotics Anonymous, and substance abuse counseling) through the department. Client refused CPS caseworker transport to substance abuse services and substance abuse program coordinator reported client was non-compliant with program goals for attending five 2-hour group/substance abuse counseling sessions weekly for 6 weeks.
 - c. Assisted client with obtaining heating assistance through the department.
 - d. Client is currently receiving Supplemental Nutrition Assistance Program (SNAP) benefits, however, IMH and Medical provider have indicated that proper nutrition for the child remains a concern due to lack of food in the home and reduced weight/height ratios for the child.
 - e. Indian Outreach Services were provided/offered including assisting the client with resume writing, transportation to medical/dental appointments, and home organization/hygiene skills. The Indian Outreach Worker established a plan and offered to meet up to three 2-hour sessions weekly with the client to work on service plan items, however, they (IOS) only met with the client for three 2-hour sessions in 6 weeks due to client canceling the scheduled appointments.
 - f. CPS worker met with the client for scheduled and non-scheduled face-to-face visits with the client and child throughout the reporting period providing instruction/guidance/review of safe sleep, home hygiene safety, safety plan (relapse), development of natural family and community supports, and progress on service plan goals with the client at every visit. Caseworker also communicated with the client via text/phone messages for transportation services to service plan substance abuse program. Caseworker observed no change in client housekeeping, safe sleep habits for child safety, family/community supports, or coping skills; parent continues to co-sleep on occasion and does not maintain food supply or the hygiene of the home.
 - g. Tribal ICWA Indian agent (name, identify tribe) contacted caseworker to provide introduction, request collaboration on service plan and service delivery, to assist with understanding tribal ancestry verification/ICWA notice (DHS-120) timeline for the tribe, and invite to Family Team Meeting.
 - h. Voluntary Client Cultural Plan developed with tribal representative and client (DHS-120c). Client will attend one cultural event, on a voluntary basis, of their choice per month at the tribe with the child; and client and child selected will be offered traditional craft/instruction monthly from Indian Outreach Services as developmentally and age-appropriate.
 - i. A written safety plan is developed with the tribal representative, family, and client.
 - j. Indian Outreach Services assisted the client with obtaining a medical/dental wellness check and offered provided transportation for the client and child.

What resources are available for me to implement ICWA/MIFPA in Michigan?

- 1) NAA Policy Manual (IOS/NAA/NAG/TAM): MDHHSnet & <http://www.michigan.gov/mdhhs>
- 2) NAA website: <http://www.michigan.gov/americanindians>
- 3) Indian Child Welfare Act of 1978: A Court Resource Guide: <http://courts.michigan.gov/scao/resources/publications/manuals/cws/ICWACTResourceGuide.pdf>
- 4) A Practical Guide to the Indian Child Welfare Act: <http://www.narf.org>
- 5) Native American Affairs (NAA) Tribal Service Area Matrix (Pub-172): <http://www.michigan.gov/americanindians>
- 6) BIA Guidelines for State Courts and Agencies in Indian Child Custody Proceedings: http://www.michigan.gov/documents/dhs/BIA-Guidelines-for-State-Courts-2015_482687_7.pdf?20151022132202
- 7) BIA ICWA Designated Indian Agent Listing: <https://www.federalregister.gov/articles/2014/12/04/2014-28510/indian-child-welfare-act-designated-tribal-agents-for-service-of-notice>

The Michigan Active Efforts & Petition Writing Job Aid was not created to replace the NAA policy manual or Michigan Court Rules regarding implementing the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA), tribal codes or state child welfare laws as applicable.

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