

# Indian Child Welfare Act (ICWA) Active Efforts Best Practices

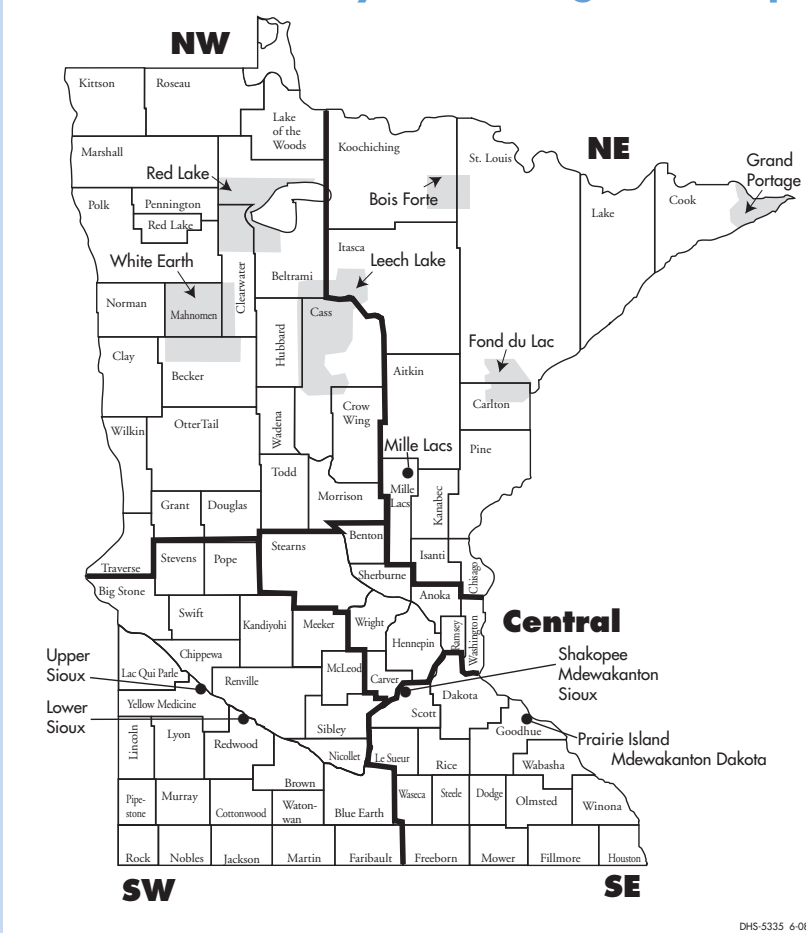


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# Minnesota County/Tribal Regional Map



DHS-5335 6-08

# Introduction

## Purpose

This practice guide is intended to provide guidance to county social workers on ways to improve and sustain best practices when working with American Indian children and families. It was developed in consultation with tribal representatives, county social workers, and others for purposes of increasing compliance of active efforts.<sup>1</sup> Any such efforts are based upon federal and state laws affecting Indian children in the child welfare system.<sup>2</sup> While this guide is intended to strengthen active efforts, it does not address all of the requirements of the federal Indian Child Welfare Act (ICWA). Any comprehensive discussion of Indian child welfare practices should provide an awareness of the disproportionate number of American Indian children in foster care.



## Disproportionality within Minnesota

The number of American Indian children placed outside their homes has significantly declined since the Indian Child Welfare Act was enacted in 1978. However, out-of-home placement rates for Indian children remain disproportionate compared to those of White/non-Hispanic children. Data from Minnesota's 2007 Child Welfare Report revealed that American Indian children were in out-of-home care at a rate seven times greater than their representation in the state's child population. *See Table 1 on the following two pages.*

**Table 1. Race of Children in Out-of-home Placement as a Percent of Total: 2000 – 2007**

<b>Race</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
African American/Black	19.4	19.3	19.6	21.4	21.3
American Indian	10.2	11.2	11.2	11.8	11.1
Asian	2.4	2.2	2.6	2.3	2.2
Pacific Islander	0.0	0.1	0.1	0.0	0.0
White	57.5	58.3	57.4	56.0	55.0
Two or more races	8.6	7.3	7.2	6.4	6.9
Unknown race	1.7	1.5	1.6	1.8	2.8
Missing data	0.2	0.1	0.3	0.3	0.6
Total	100.0	100.0	100.0	100.0	100.0
Hispanic*	5.5	5.9	6.5	7.0	7.5

\*Hispanic may be of any race.

**Table 1. Race of Children in Out-of-home Placement as a Percent of Total: 2000 – 2007 (continued)**

Race	2005	2006	2007	Number of unique children 2007	Race as percent of MN child population 2000
African American/Black	20.0	20.7	20.8	3,071	5.0%
American Indian	11.5	11.6	12.3	1,816	1.6%
Asian	2.0	2.1	2.3	333	4.2%
Pacific Islander	0.1	0.0	0.0	6	0.0%
White	56.3	54.2	52.5	7,770	83.9%
Two or more races	7.1	7.7	8.2	1,215	3.4%
Unknown race	2.5	3.1	3.5	525	1.9%
Missing data	0.6	0.6	0.4	64	0.0%
Total	100.0	100.0	100.0	14,800	100.0%
Hispanic*	7.8	8.2	8.4	1,237	4.3%
*Hispanic may be of any race.					

## Federal and state response

To help address the excessive numbers of Indian children removed from their homes, and to eliminate policies and practices that contribute to these high rates of out-of-home placement, Congress passed the Indian Child Welfare Act. This legislation (<http://www4.law.cornell.edu/uscode/25/ch21.html>) requires the state and local child welfare agencies, and private child placing agencies, to:

- Protect the best interests of Indian children
- Promote stability and security of Indian tribes and families
- Comply with federal minimum standards before removing an Indian child
- Place Indian children in foster or adoptive homes that reflect the unique values of Indian culture.

The Indian Child Welfare Act requires that tribes have a right to intervene at any time in child custody proceedings; have the right to make recommendations regarding the placement of tribal children; and counties and private child placing agencies must provide active efforts when contemplating the removal or placement of an Indian child. Also, it is important to note that the requirements and provisions within ICWA do not apply in a tribal court setting.

The Minnesota Indian Family Preservation Act (MIFPA) was passed in 1985 to reflect federal law and incorporate additional protections, such as requiring tribal notification for voluntary proceedings, and appropriating funding for provision of services to Indian children and families, (<https://www.revisor.leg.state.mn.us/statutes/?id=260.751>). [Minn. Stat. 260.751-260.835]



As important to protecting the long-term best interests of Indian children and families, as defined by tribes, is the Tribal/State Indian Child Welfare Agreement (<http://edocs.dhs.state.mn.us/lfserver/legacy/DHS-5022-ENG>). This legislation, as amended in 2007, is a comprehensive legal document between the Department of Human Services and each of the 11 tribes located within the state of Minnesota. It includes collaborative language and understanding ranging from the care and custody of Indian children to jurisdictional issues. It builds on ICWA and MIFPA, while maximizing the guidance, resources and participation of tribes.



## Tribal sovereignty

### Full faith and credit for tribal court orders

Tribes are separate, distinct nations, whose sovereignty predates the establishment of the United States. Defining tribal membership and having a say in the future of their children are key components of tribal sovereignty. Recognizing sovereignty also includes recognition of tribal judicial proceedings. ICWA states:

“The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.”<sup>3</sup>



## What are active efforts?

Active efforts means more than reasonable efforts, and requires acknowledging traditional helping and healing systems of an Indian child's tribe, and using these systems as the core to help and to heal the Indian child and family. [See 25 U.S.C. 1912(d): Bureau of Indian Affairs Guidelines, 44 Fed. Reg. 67,584, 67,595 at D.2, (Nov. 26, 1979)] Before the local social service agency makes a decision that will affect a child's well-being, or when an out-of-home placement is contemplated, the local social service agency staff must:



- Seek guidance from an Indian child's tribe on how that family is structured
- Ascertain how the family can obtain help
- Determine what family and tribal resources are available
- Determine what barriers the family faces that could threaten its preservation, and
- Work with a child's tribe and family to develop an alternative placement.

See DHS Social Services Manual XIII-3559:  
([http://www.dhs.state.mn.us/main/groups/county\\_access/documents/public/dhs\\_id\\_018765.pdf](http://www.dhs.state.mn.us/main/groups/county_access/documents/public/dhs_id_018765.pdf)).

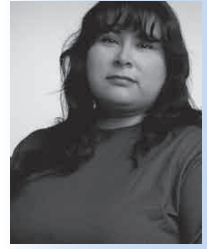
Active efforts are required throughout the social service agency's involvement with a family. The Tribal/State Indian Child Welfare Agreement identifies potential active efforts as:

- Notifying and requesting involvement of the tribe(s) or designated tribal representative(s) to participate in the case at the earliest point possible, and actively solicit their advice throughout the case.

- Requesting that tribally designated representative(s) with substantial knowledge of social and cultural standards and child-rearing practices within the tribal community evaluate the family's circumstances, and assist in developing a case plan that uses tribal and Indian resources.
- Providing services and access to both tribal and non-tribal services, including but not limited to, financial assistance, food, housing, health care and transportation. Services are to be on-going throughout the case to directly assist families in accessing and engaging services.
- Arranging visitation (including transportation) that will take place, whenever possible, in the home of the parent(s), Indian custodian(s), other family members, or other non-institutional setting, and include:



- Keeping a child in close contact with parent(s), siblings, and other relatives, regardless of age.
- Allowing a child and those with whom a child is visiting to have natural and unsupervised interaction whenever consistent with safety.
- Consulting with tribal representative(s) to determine and arrange for the most natural setting that ensures safety when safety considerations require supervised visitation.
- Consulting with the tribe(s) about availability of tribal support for the family, including traditional practices, as well as other tribal services, and using these tribally-based family preservation and reunification services whenever available. If tribally-based services are not available, make referrals to other Indian agencies for services.
- Consulting with extended family members for help and guidance, using them as a resource for a child. If it is difficult working with the family, seek assistance from an agency, including tribal social services staff who have expertise working with Indian families.
- Providing services to extended family members to allow them to be considered for placement if out-of-home care becomes necessary.



## Best practices for providing active efforts

### Communication and collaboration

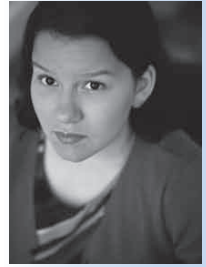
Communication between county and tribal social service providers is critical in engaging active efforts. Actively engaging the tribe at the earliest point ensures that child welfare/child protection staff are taking appropriate measures to meet the social and cultural needs of Indian children and their families. Consistent and shared practices between county and tribal social services strengthens relationships, increases county worker knowledge of tribal child welfare services and community resources, and provides greater familiarity with active efforts requirements.

Furthermore, effective communication and collaboration creates partnerships between county and tribal agencies, providing opportunities for trust, and increasing familiarity with each other's child welfare policies, practices and resources. Examples of effective communication include:

- Establishing verbal, written and/or face-to-face contact with a child's tribe at the start of service provision or maltreatment report, with follow-up to discuss findings, services and/or other related needs
- Identifying a manner of communication that is timely and effective for county and tribal staff to initiate contact and exchange information
- Maintaining a current contact list of the 11 tribal social service agencies (see Attachment A), including community services and child welfare advocates identified or referred by the tribe(s)
- Partnering through local collaborative meetings and trainings that are hosted and/or facilitated by tribal child welfare agencies and community providers who serve Indian children and families.

## Identification of an Indian child

County social worker(s) shall take immediate action to determine whether a child is a member of, or eligible for membership, in a tribe. This is determined by:



- Interviewing all household members to inquire if they have knowledge of Indian ancestry.
- Interviewing both maternal/paternal sides of a child's family, including, but not limited to, grandparents, aunts/uncles, siblings and extended family members, if necessary.
- Contacting a child's tribe, if known, to identify family and community members who may have a relationship with a child or family.
- Inquiring about and doing research on alleged fathers.
- Using the ICWA-MIFPA Social Worker Checklist (<http://edocs.dhs.state.mn.us/lfsrver/Legacy/DHS-5224-ENG>) when working with Indian children or children believed to be of Indian ancestry (see Attachment B).
- Performing a history check on a child and their family to determine if there was previous involvement with the county. If so, this includes:
  - Contacting a child's tribe(s) and sharing information relevant to pending needs, services, case file.
  - Verifying a child's membership and/or eligibility for membership.
- Indicating within the Social Services Information System (SSIS) Client Field whether a child is ICWA eligible. Documentation should include the identified tribe(s), and all previous and undocumented notifications to the tribe(s).

## Notification to tribes

County agencies are required to notify tribal governments if a potential out-of-home placement exists for an Indian child. To ensure timely notifications:

- Send written notice to a child's tribe within seven days of making a determination, along with initial steps to remedy the condition(s) that lead to services if the county determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement, and the condition(s) require involvement of the agency beyond 30 days. [MIFPA, 260.761, subd. 2]
- Complete "Notice to Tribe of Services" (i.e., SSIS Form 45) and forward to a child's tribe(s) via registered mail. Follow-up to confirm all required documentation has been received, and to address any additional inquiries the tribe may have regarding the notice.

## Emergency placement

Under the Indian Child Welfare Act, Indian children domiciled on a reservation, but temporarily located off the reservation, can be removed in order to prevent imminent harm to a child.<sup>4</sup> The Maltreatment of Minors Act [Minn. Stat. §626.556] requires counties to investigate allegations of child maltreatment. For Indian children, this includes those living on or off the reservation. The Tribal/State Indian Child Welfare Agreement states:

"The State further recognizes that collaboration between counties and tribes is crucial in obtaining the best results for an Indian child. At a minimum, best practices require that a local social service agency immediately notify designated tribal authorities and request their assistance to enter the reservation when a situation arises that requires assessment of or investigation into the safety or well-being of an Indian child, or a child whose Indian identity is not known, and who resides or is domiciled on a reservation..."<sup>5</sup>



The Maltreatment of Minors Act further provides for counties to share non public information with the tribe.<sup>6</sup> Collaboration with tribes concerning emergency placements can include:

- Consultation with the tribe to develop an emergency contact list that has up-to-date information for staff, including hours on-call, and after-hours response system
- Develop a process with the tribe for conducting joint investigations
- Develop a checklist for information to be shared with the tribe.



### **Qualified expert witness**

Whether a person qualifies as an expert witness requires a legal determination. However, social workers are reminded that:

- ICWA prohibits placement of an Indian child in foster care or a Termination of Parental Rights unless a district court hears testimony of qualified expert witnesses who believe that continued custody of a child by the parent(s) or Indian custodian is likely to result in serious emotional or physical harm<sup>7</sup>
- ICWA allows for more than one qualified expert witness<sup>8</sup>
- The qualifications of a tribally-designated expert witness is not subject to challenge in an Indian child custody proceeding<sup>9</sup>
- Tribes are in the best position to determine who is familiar with the tribes' child rearing practices and customs.

For further guidance on what expertise and characteristics qualify one as an expert witness under ICWA, see the Tribal/State Indian Child Welfare Agreement.

## Case planning

Under Minnesota law, the case plan for an Indian child is to be prepared in consultation and participation with tribe(s), if the tribe has intervened.<sup>10</sup> The following are suggestions for developing a case plan with a tribe:

- Determine the most effective way(s) of communicating (i.e., face-to-face, telephone, e-mail), and establish an agreed upon method of communication/contact with the tribe for purposes of preparing a case plan
- Provide copies of the case plan to the tribe, and inquire if other records are necessary to help the tribe to be more informed in the case planning process
- Ask the tribe if there is additional information workers should be aware of that may be helpful in case planning
- Ask the tribe if there are any social and cultural considerations to be aware of in preparing the case plan, including, but not limited to, spiritual and religious beliefs and/or practice needs of a child
- Ask the tribe if there are additional tribal resources such as elders within the community who may have an interest in the case, and who may be helpful to a child and their family
- Ask the tribe whether they have an interest in meeting regularly to enhance communication and case planning practice.

## Information-sharing

Tribal access to documented information collected and maintained by the supervising local social service agency and/or child placing agency is a necessary and allowable practice to building collaboration and meeting the purpose of ICWA and MIFPA. If requested, tribes are to be given access to all files concerning a child.<sup>11</sup> The Minnesota Legislature clarified that information a local welfare agency collects as part of a child maltreatment investigation or Family Assessment, including non public information, shall be shared with a child's tribal social services agency.<sup>12</sup>

Counties are encouraged to consult and meet with a child's tribe to discuss the most effective and efficient ways to request and receive child welfare information, such as development of county/tribal Memorandums of Understanding to expedite the process.



## Attachment A



### Minnesota Tribal Social Service Directory

Bois Forte Band of Chippewa (218) 757-0111  
Human Services  
13071 Nett Lake Road  
Nett Lake, MN 55772

Fond du Lac Band of  
Lake Superior Chippewa (218) 878-2139  
Human Services  
927 Trettle Lane  
Cloquet, MN 55720

Grand Portage Band of Chippewa (218) 475-2453  
Human Services  
PO Box 428  
Grand Portage, MN 55605

Leech Lake Band of Ojibwe (218) 335-8270  
Family Services  
115 6th Street NW, Suite E  
Cass Lake, MN 56633

Lower Sioux Indian Community (507) 697-9108  
Social Services  
39527 Res. Hwy. 1/ PO Box 308  
Morton, MN 56270

Mille Lacs Band of Ojibwe (320) 532-4754  
Family Services  
17230 Noogiming Drive  
Onamia, MN 56359

Prairie Island Indian Community (651) 385-4113  
Children and Family Services  
5636 Sturgeon Lake Road  
Welch, MN 55089

Red Lake Band of Chippewa Family and Children Services PO Box 427 Red Lake, MN 56671	(218) 679-2122
Shakopee Mdewakanton Sioux Community 2330 Sioux Trail NW Prior Lake, MN 55372	(952) 496-6163
Upper Sioux Community Social Services PO Box 147 Granite Falls, MN 56241	(320) 564-2360
White Earth Reservation Indian Child Welfare PO Box 358 White Earth, MN 56591	(218) 983-4647

## Attachment B

### ICWA/MIFPA Social Worker Checklist (cover page)

This checklist is to help social workers in meeting the requirements of the Indian Child Welfare Act and Minnesota Indian Family Preservation Act (<http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5224-ENG>). Always start at Section I - Intake.

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## End notes

<sup>1</sup>American Indian Disparities Initiative Advisory Committee recommendations, September 2003 ([http://www.dhs.state.mn.us/main/groups/children/documents/pub/dhs\\_id\\_050644.pdf](http://www.dhs.state.mn.us/main/groups/children/documents/pub/dhs_id_050644.pdf)); Department of Human Services child welfare regional forums and teleconferences, 2004-2006; Indian Child Welfare Advisory Council recommendations, 2006-2007.

<sup>2</sup> Indian Child Welfare Act of 1978, 25 U.S.C., 1901 et seq.; Minnesota Indian Family Preservation Act, Minn. Stat. §§260.751 to 260.835.

<sup>3</sup> 25 U.S.C. §1911 (d).

<sup>4</sup> 25 U.S.C. §1922.

<sup>5</sup> Tribal/State Agreement, page 4, Part I.C (1), 2007.

<sup>6</sup> Minn. Stat. §626.556, subd. 10(h) 2007.

<sup>7</sup> 25 U.S.C. §1912 (e) and (f).

<sup>8</sup> 25 U.S.C. §1912 (e).

<sup>9</sup> Tribal/State Agreement, page 17, Part I.D., 2007.

<sup>10</sup> Minn. Stat. §260C.212, subd. 1(b).

<sup>11</sup> Tribal/State Agreement, page 23, Part II.F., 2007.

<sup>12</sup> Minn. Stat. §626.556, subd. 10(h) 2007.



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