

ICWA Practice in Minnesota

Children's Justice Initiative Conference

September 29, 2015

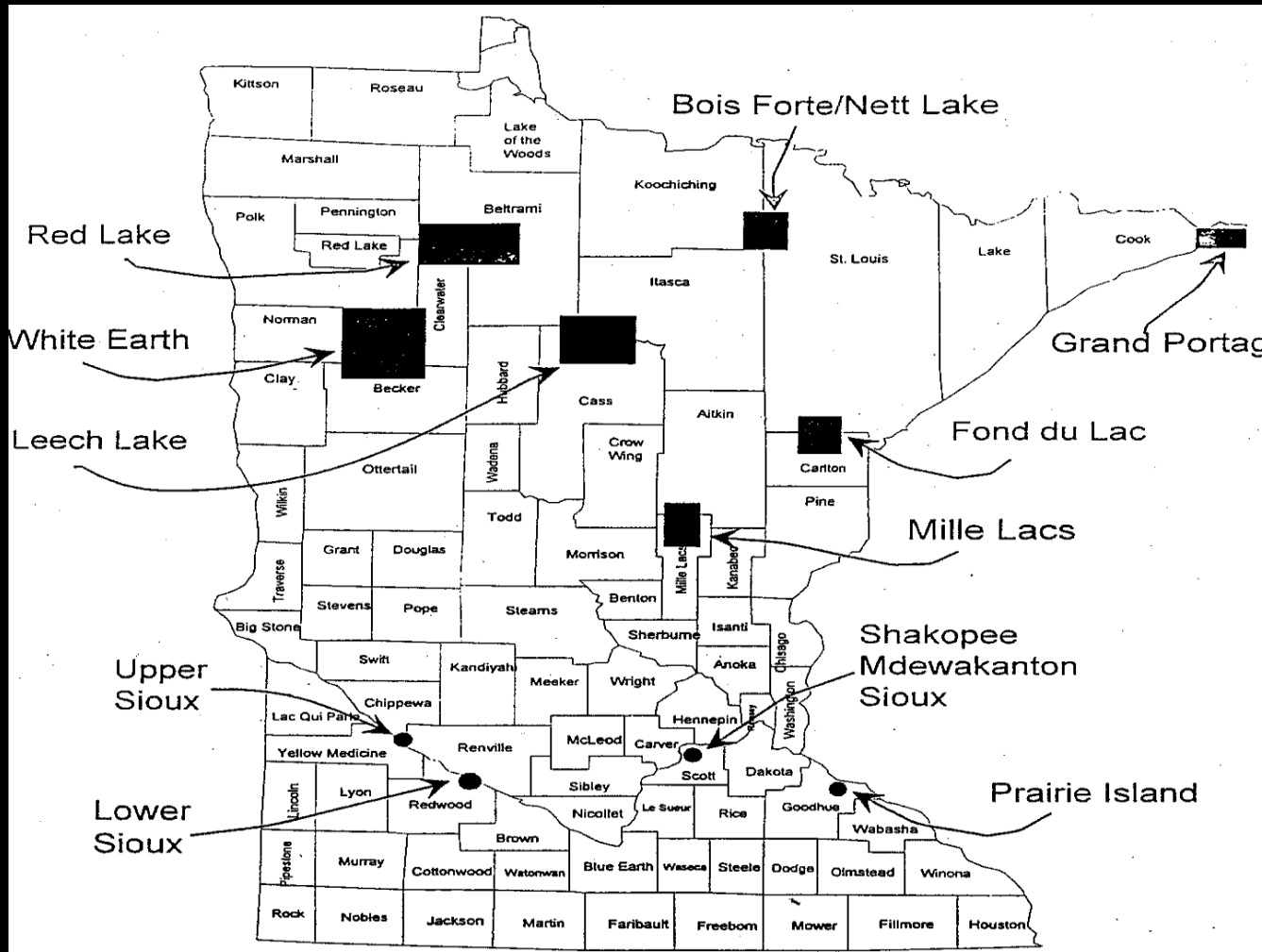
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Indian Child Welfare Act - ICWA

(25 USC §§ 1901-1963)

- Passed by Feds in 1978
- “[A]larmingly high percentage of Indian families” being “broken up by the removal, often unwarranted, of their children”
- Protects the Tribe’s interest in children and promotes culturally appropriate responses to CP cases

Reservations in MN



Implementing ICWA - the Feds

- BIA Guidelines
 - First enacted in 1979 by the Department of the Interior
 - Revised in 2015
- Proposed Federal Regulations
 - Proposed in February 2015, not yet enacted

Implementing ICWA - MN

- Minnesota Indian Family Preservation Act (Minn. Stat. §§260.751-260.835)
- Minnesota state law that is consistent with ICWA
 - Has historically provided broader coverage for Indian children
- 2015 major legislative changes
 - MN law more in line with proposed regulations

Implementing ICWA - TSA

- ICWA allows states and tribes to enter into agreements about ICWA cases
- MN Tribal State Agreement
 - First signed in 1998 by DHS and tribal leaders from 11 MN tribes
 - Renegotiated in 2007
 - Workgroup proposed changes to MIFPA in 2015
 - Matches a lot of the proposed Federal Regulations

M.S.A. 260C.215, Subd. 6

- Requires agencies to have procedures for implementing ICWA
- Requires agencies to recruit diverse foster and adoptive homes
- “[T]he agency shall defer to tribal judgment as to suitability of a particular home when the tribe has intervened” per ICWA

Screening

- Receive maltreatment report
- Report screened-in by agency
 - Questions your agency should ask re: ICWA applicability
 - Consult with tribe re: screening? (optional)
- New MIFPA requirements
 - Active efforts must be done before an out of home placement may occur
 - Requirements for tribal notice
 - “Immediately” inform child’s tribe if there is reason to believe child is an Indian child (fax/phone/email)
(Minn. Stat. § 260.761 and § 626.556, subd. 10(a)(5))

Active Efforts

- Rigorous and concerted level of effort
- Ongoing throughout the involvement of the local social services agency
- Continuously involve the Indian child's tribe
- Uses the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe to preserve the Indian child's family and prevent placement of an Indian child
- If placement occurs, to return the Indian child to the child's family at the earliest possible time.
- Active efforts sets a higher standard than reasonable efforts to preserve the family, prevent breakup of the family, and reunify the family, according to section 260.762.
- Active efforts includes reasonable efforts as required by Title IV-E of the Social Security Act, United States Code, title 42, sections 670 to 679c.

Petition to Court

- Tribal Notification

- Court Notice vs. Screening notice
- Registered mail
- File the green receipt!

- Party/Participant

- Tribe is always a Party
- Status of Dads

- Definition under MIFPA (Minn. Stat. §260.755, subd. 14)
 - Includes father as defined by tribal law/custom
 - Paternity acknowledged when unmarried father takes any action to hold himself out as bio father of Indian child
- Different from non-ICWA cases
- Broader right to counsel

EPC Hearing

- Standard for Placement
 - “Imminent physical damage or harm”
 - Are there services/safety planning that could allow child to remain in home?
- NEW: required findings for court order about active efforts before ordering OHP or permanency
 - Efforts to ID child as Indian child, ID tribe, involvement with tribe
 - Request by agency for assistance from tribal expert
 - Offer and access to special services
 - Consultation with tribe, extended family, services to relative(s) so they can be placement
 - Visitation

(Minn. Stat. § 260.762, subd. 3 (new))

EPC Hearing - Placement

- Placement Preferences

- What they are

- (i) a member of the Indian child's extended family
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing
- (iv) an institution for children approved by Indian tribe/operated by an Indian organization which has a program suitable to meet the Indian child's needs.
(25 USC § 1915)

- When can you deviate?

- ICWA → “Good cause”
- MIFPA now defines what constitutes “good cause”
(Minn. Stat. § 260.771, subd. 7 (new))

EPC Hearing - QEW

For any foster care placement, need testimony from qualified expert witness that continued custody of child by parent likely to result in serious emotional or physical damage to child (25 USC § 1912 (e))

- Who is a Qualified Expert Witness?
- MIFPA now provides
 - Definition
(Minn. Stat. § 260.755, subd. 17a(new))
 - Agency must show diligent efforts to obtain tribally-designated QEW
 - Order of Preference for QEW
(Minn. Stat. § 260.771, subd. 6(new))
- Affidavit or testimony?

Kinship Search

- Broader definition of “kin”
 - Look to the tribe to define
- Don't give up
 - Not sufficient to just write a letter
 - Make phone calls/visits to relatives
- Active Efforts with relatives required

(Minn. Stat. § 260.762, subd. 3(5) - new)

Transfer to Tribal Court

- When transfer can happen
 - In MN → Any stage of proceeding
- Who can ask for transfer?
 - Parent/Indian custodian
 - Tribe
- Court must transfer, unless
 - Objection by either parent
 - “Good cause to contrary”
 - MIFPA now provides guidance
(Minn. Stat. § 260.771, subd. 3(a) (new))

Court Reports

- Document details:
 - Active Efforts for the child's immediate family
 - Active Efforts with relatives
 - Tribal contacts since the last hearing, and outcomes

Review Hearings

- Concurrent Permanency Planning -
How should the Tribe be involved?
- Case Planning Meetings –
When and how should the
Tribe be involved?

Permanency

- Making the permanency decision
 - Role of tribe
 - 6 months vs. 1 year; and active efforts
- Northstar/licensing requirements
 - Impact on ICWA cases and decisions
- Termination of Parental Rights
 - Burden of Proof: beyond a reasonable doubt
 - Do you have a QEW?
 - Continued custody of child by parent is likely to result in serious emotional or physical damage to child
(25 USC § 1912(f))