

Placement Options/Requirements
under MIFPA—the Michigan Indian
family preservation act—MCL 712B.1-41

MCL 712B.23

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Foster Care/Preadoptive Placement

- Indian child shall be placed in the least restrictive setting that:
 - most approximates a family and,
 - in which the child's special needs may be met
- Child shall be placed within reasonable proximity to his/her home (taking into account any special needs of the child)

Foster care/Preadoptive Placement

Absent good cause to the contrary, such placement of an Indian child must be in the following order of preference

- (a) member of the Indian child's extended family
- (b) foster home (licensed, approved, or specified by tribe)
- (c) Indian foster home (licensed/approved by the dep't)
- (d) Institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

MCL 712B.23(1)(a)

A member of the Indian child's extended family:

- Due to constitutional and other viable concerns, first determine if an appropriate parent is available to parent the child, then
- Identify who are the extended family members (this could differ based on the law/custom of the child's Indian tribe)
- "Extended family members" is defined at MCL 712B.3(f)

MCL 712B.23(1)(b)

A foster home licensed, approved, or specified by the Indian child's tribe:

- communicate with the Indian child's tribe (not necessarily the tribe that is geographically closest to the child/jurisdiction)
- many tribes have a board, committee or counsel that meets to discuss these issues and make recommendations to the state court
- some tribes have their own foster care agency

MCL 712B.23(1)(c)

An Indian foster home licensed or approved by the department:

- Communicate with the Indian child's tribe regarding who within the home is the "Indian" making the home an Indian foster home
- If possible, attempt to place with Indian child's tribe member foster home

MCL 712B.23(1)(d)

An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs:

- if considering placement pursuant to this subsection, please review:
- MCL 712B.23(5)(a) or (b)—Re: Good Cause
and
- MCL 712B.23(8)—Re: Social/Cultural Standards

Adoptive Placement

Absent good cause to the contrary, such placement of an Indian child must be in the following order of preference

- (a) A member of the child's extended family
- (b) A member of the Indian child's tribe
- (c) An Indian family

MCL 712B.23(2)(a)

A member of the Indian child's extended family:

- Due to constitutional and other viable concerns, first determine if an appropriate parent is available to parent the child, then
- Identify who are the extended family members (this could differ based on the law/custom of the child's Indian tribe)
- "Extended family members" is defined at MCL 712B.3(f)

MCL 712B.23(2)(b)

A member of the Indian child's tribe:

- Communication with the tribe is important in order to locate or verify tribal membership of prospective placements
- The board, committee, or counsel designated by a tribe to give a recommendation on behalf of a tribe should be consulted regarding any placements, including with a member of the Indian child's tribe

MCL 712B.23(2)(c)

An Indian family:

- Communicate with the Indian child's tribe as to who in the home defines the home as an Indian family
- To what Indian tribe (how determined)
- The board, committee, or counsel designated by a tribe to give a recommendation on behalf of a tribe should be consulted regarding any placements, including with an Indian family

Good Cause MCL 712B.23(5)

For any placement under this Chapter:

Good cause to not follow the order of preference shall be based on one or more of the following:

- (a) Request made by a child of a sufficient age and/or
- (b) Child has an extraordinary physical or emotional need as established by testimony of an expert witness

Standards MCL 712B.23(8)

For any placement under this Chapter:

The standards to be applied in meeting the placement preferences established in this section shall be the prevailing social and cultural standards of the Indian tribe or tribes in which the parent or extended family resides or maintains social and cultural ties.

- In order to understand what the prevailing social and cultural standards are of a particular tribe, communication with the Indian child's tribe needs to occur.

Best interests of child; duties of court MCL 712B.5

- In Indian child custody proceedings, including determining placement, the court must also determine the best interests of the Indian child, in consultation with the Indian child's tribe
 - Particularly with respect to placement, "place an Indian child in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community"

Tribal Preference MCL 712B.23(6)

In foster care, preadoptive, or adoptive placement:

- If Indian child's tribe establishes a different order of preference,
- The department or court ordering the placement
- Shall follow the tribe's order of preference
- Department/Court must communicate with the Indian child's tribe to inquire whether there is a different order of preference

Sault Ste. Marie Tribe of Chippewa Indians (SSMTCI) Placement Preferences

Tribal Code 30.602

- (1) The Tribe's first priority for adoption and foster care placement is for placement of tribal children through the Binogii Placement Agency.
- (2) In order to accomplish the purpose of the Indian Child Welfare Act and to maintain contact with the Indian culture, a child placement agency shall place a child consistent with the following placement priorities, unless waived by the Sault Tribe Child Welfare Committee

Sault Ste. Marie Tribe of Chippewa Indians
(SSMTCI) Placement Preferences Cont'd

(a) The first priority is for placement with extended family in the immediate area as follows:

- I. Grandparents
- II. aunts/uncles
- III. brothers /sisters
- IV. first cousins to the child

Sault Ste. Marie Tribe of Chippewa Indians
(SSMTCI) Placement Preferences Cont'd

(b) The second priority is for placement in the immediate area as follows:

- I. an Indian family
- II. a non-Indian family

(c) The third priority is for placement with an Indian family outside the immediate area

(d) The fourth priority is for placement in the best interest of the child as determined by the Child Welfare Committee

Additional Provisions

This presentation does not include all the placement provisions under MIFPA.

There is more in depth information regarding good cause to deviate from the preference and the burden of establishing good cause under subsection 3-4. MCL 712B.23(3)-(4).

There are some record keeping/sharing requirements, as well, under subsection 7 and 10. MCL 712B.23(7) and (10).

Subsection 9 has also not been discussed in this presentation. MCL 712B.23(9).

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Supporting documentation for all MIFPA/ICWA webcasts can be found in the “Index of Training Materials” at the following site:

<http://courts.mi.gov/administration/scao/officesprograms/cws/childwelfareservicetraining/pages/default.aspx>

The archive of the March 8, 2013 training “Michigan Indian Family Preservation Act: New Indian Child Welfare Legislation” is available at the following site:

<http://webcast.you-niversity.com/youtools/companies/viewArchives.asp?affiliateId=133>