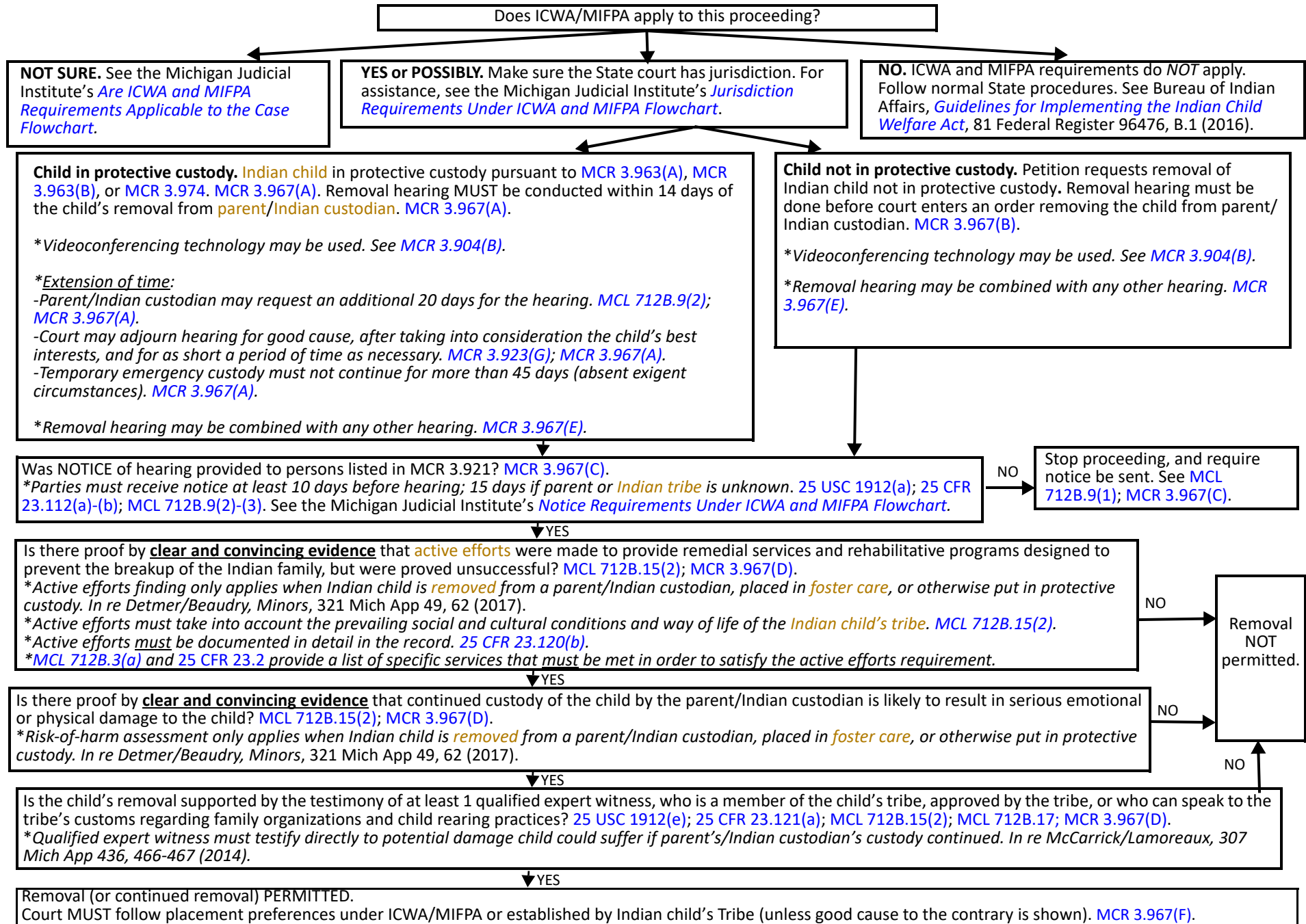


# Flowchart: Removal Hearing Proceedings Under ICWA and MIFPA<sup>1</sup>



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<sup>1</sup> See the Michigan Judicial Institute's [Adoption Proceedings Benchbook](#) and [Child Protective Proceedings Benchbook](#) for more information.

## Glossary

### A

#### Active efforts

- For purposes of the Michigan Indian Family Preservation Act (MIFPA), *active efforts* are “actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the **Indian 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 [\[42 USC\] 679c](#), and also include, but are not limited to, 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." [MCL 712B.3\(a\)](#). See also [MCR 3.002\(1\)](#), which contains a substantially similar definition of *active efforts*.

- For purposes of the Indian Child Welfare Act (ICWA), *active efforts* are "affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an **Indian child** with his or her family. Where an **agency** is involved in the **child-custody proceeding**, active efforts must involve assisting the **parent** or parents or **Indian custodian** through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the **Indian child's tribe** and should be conducted in partnership with the Indian child and the Indian child's parents, **extended family members**, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;

(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;

(6) Taking steps to keep siblings together whenever possible;

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian

child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

(9) Monitoring progress and participation in services;

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;

(11) Providing post-reunification services and monitoring." [25 CFR 23.2](#).

### Agency

- For purposes of [23 CFR 23.101–23 CFR 23.144](#), *agency* is “a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements.” [25 CFR 23.102](#).

## C

### Child custody proceeding

- For purposes of an **Indian child**, *child custody proceeding* “includes, but is not limited to, 1 or more of the following:
  - (i) Foster care placement. Any action removing an Indian child from his or her **parent** or **Indian custodian**, and where the parent or Indian custodian cannot have the Indian child returned **upon demand** but parental rights have not been terminated, for temporary placement in, and not limited to, 1 or more of the following:
    - (A) **Foster home or institution.**
    - (B) The home of a guardian or limited guardian under . . . the estates and protected individuals code, . . . [MCL 700.5201](#) to [\[MCL\] 700.5219](#).
    - (C) A juvenile guardianship under [\[MCL 712A.19a](#) or [MCL 712A.19c](#)].
  - (ii) Termination of parental rights. Any action resulting in the termination of the parent-child relationship.
  - (iii) Preadoptive placement. Temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but before or in lieu of adoptive placement.
  - (iv) Adoptive placement. Permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption.
  - (v) An Indian child is charged with a **status offense** in violation of [\[MCL 712A.2\(a\)\(2\)-\(4\)\]](#) or [\[MCL 712A.2\(d\)\]](#).

(vi) Child custody proceeding does not include a placement based on an act that, if committed by an adult, would be a crime or based on an award, in a divorce proceeding, of **custody** to 1 of the parents.” [MCL 712B.3\(b\)](#).

See also [25 USC 1903\(1\)](#) and [MCR 3.002\(2\)](#), which both contain substantially similar definitions of *child custody proceeding*; [25 CFR 23.2](#), which contains a substantially similar definition of *child custody proceeding* except that it uses the phrase “may culminate in one of the following outcomes,” rather than the phrase “includes” and specifically excludes **emergency proceeding** from the definition.

### **Culturally appropriate services**

- For purposes of an **Indian child**, *culturally appropriate services* are “services that enhance an Indian child’s and family’s relationship to, identification, and connection with the **Indian child’s tribe**. Culturally appropriate services should provide the opportunity to practice the teachings, beliefs, customs, and ceremonies of the Indian child’s tribe so those may be incorporated into the Indian child’s daily life, as well as services that address the issues that have brought the Indian child and family to the attention of the department that are consistent with the tribe’s beliefs about child rearing, child development, and family wellness. Culturally appropriate services may involve tribal representatives, **extended family members**, tribal elders, spiritual and cultural advisors, tribal social services, individual Indian caregivers, medicine men or women, and natural healers. If the Indian child’s tribe establishes a different definition of culturally appropriate services, the court shall follow the tribe’s definition.” [MCL 712B.3\(d\)](#). See also [MCR 3.002\(4\)](#), which contains a substantially similar definition of *culturally appropriate services*.

### **Custody**

- For purposes of an **Indian child**, *custody* is “physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law. A party may demonstrate the existence of custody by looking to Tribal law or Tribal custom or State law.” [25 CFR 23.2](#).

## **E**

### **Emergency proceeding**

- For purposes of an **Indian child**, *emergency proceeding* “means and includes any court action that involves an emergency removal or emergency placement of an Indian child.” [25 CFR 23.2](#).

### **Extended family members**

- For purposes of an **Indian child**, *extended family members* is “that term as defined by the law or custom of the **Indian child’s tribe** or, in the absence of that law or custom, means a person who has reached the age of 18 and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent and includes the term ‘relative’ as that term is defined in [[MCL 712A.13a\(1\)\(j\)](#)].” [MCL 712B.1\(3\)\(f\)](#). See also [25 USC 1903\(2\)](#), [MCR 3.002\(7\)](#),

and [25 CFR 23.2](#), which contain substantially similar definitions of *extended family members*.

## F

### Foster home or institution

- For purposes of an **Indian child**, *foster home or institution* is “a child caring institution as that term is defined in . . . [MCL 722.111](#).” See also [MCR 3.002\(8\)](#), which contains a substantially similar definition of *foster home or institution*. [MCL 712B.3\(g\)](#).

## I

### Indian child

- An *Indian child* is “an unmarried person who is under the age of 18 and is either of the following:

(i) A member of an **Indian tribe**.

(ii) Eligible for membership in an Indian tribe as determined by that Indian tribe.” [MCL 712B.3\(k\)](#).

See also [MCR 3.002\(12\)](#), which contains a substantially similar definition of *Indian child*; [25 USC 1903\(4\)](#), which contains a substantially similar definition except that it also requires that the Indian child “[be] eligible for membership in an Indian tribe *and* [be] the biological child of a member of an Indian tribe,”<sup>2</sup> (emphasis added); [25 CFR 23.2](#), which contains a substantially similar definition of *Indian child* as [25 USC 1903\(4\)](#) except that it uses the term *citizen* and *citizenship* synonymously with *member* and *membership*.

### Indian child’s tribe

- For purposes of an **Indian child**, *Indian child’s tribe* is:

“(1) The **Indian tribe** in which an Indian child is a member or eligible for membership; or

(2) In the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe described in [[25 CFR 23.109](#)].” [25 CFR 23.2](#).

See also [MCL 712B.3\(j\)](#), [MCR 3.002\(13\)](#), [MCL 712B.3\(j\)](#), and [25 USC 1903\(5\)](#), which contain substantially similar definitions of *Indian child’s tribe*, except that, where the Indian child is a member of or eligible for membership in more than one tribe, the term includes the Indian tribe where the Indian child has the more or most significant contacts.

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<sup>2</sup> See also *In re KMN*, 309 Mich App 274, 287 (2015) (noting that “[t]he definition of ‘Indian child’ in MIFPA is similar to ICWA, but does not require the child, who is eligible for membership, to also be the biological child of a member of an Indian tribe”).

### Indian custodian

- For purposes of an **Indian child**, *Indian custodian* is “any Indian person who has custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the Indian child’s **parent**.” [MCL 712B.3\(n\)](#). See also [25 USC 1903\(6\)](#) and [MCR 3.002\(15\)](#), which both contain substantially similar definitions of *Indian custodian*; [25 CFR 23.2](#), which contains a substantially similar definition of *Indian custodian* except that it also permits an Indian to “demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.”

### Indian tribe or tribe

- For purposes of an **Indian child**, *Indian tribe* or *tribe* is “any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska native village as defined in . . . [\[43 USC 1602\(c\)\]](#).” [MCL 712B.3\(o\)](#). See also [25 USC 1903\(8\)](#), [MCR 3.002\(17\)](#), and [25 CFR 23.2](#), which contain substantially similar definitions of *Indian tribe*.

## R

### Removed

- “MIFPA does not define ‘removed,’ [and i]n the absence of a statutory definition,” *removed*, as used in MIFPA, [MCL 712B.15\(2\)](#), means “the instance when a court orders that a child be physically transferred or moved from the care and residence of a parent or Native American custodian to the care and residence of some other person or institution.” *In re Detmer*, 321 Mich App 49, 62, 64-65 (2017) (Indian child was removed from a parent within the meaning of [MCL 712B.15\(2\)](#) when the trial court removed the child from the respondent-mother’s care and residence, over her objection, and placed the child in the care and residence of the nonrespondent-father). But see *In re England*, 314 Mich App 245, 264-265 (2016) (for purposes of [MCL 712B.15\(2\)](#), the Indian child was not removed from the respondent-mother when the child “remained with his mother in the family home throughout the[ child protective] proceedings”).

## P

### Parent

- For purposes of an **Indian child**, *parent* is “any biological parent or parents of an Indian child or any person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. *Parent does not include the putative father if paternity has not been acknowledged or established.*” [MCL 712B.3\(s\)](#) (emphasis added). See also [25 USC 1903\(9\)](#), [MCR 3.002\(20\)](#), and [25 CFR 23.2](#), which contain substantially similar definitions of *parent*, except



that, where the Indian child has been adopted, they all require the adopter to be an Indian.

## S

### Status offenses

- For purposes of an **Indian child**, *status offenses* are “offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person’s status as a minor (e.g., truancy, incorrigibility).” [25 CFR 23.2](#).

## U

### Upon demand

- For purposes of an **Indian child**, *upon demand* allows “the **parent** or **Indian custodian** [to] regain custody [of the child] simply upon verbal request, without any formalities or contingencies.” [25 CFR 23.2](#).

