

## Response to questions on the new Indian Child Welfare Act (ICWA) and Minnesota Indian Family Preservation Act (MIFPA) Notice Forms

ICWA and MIFPA Notice forms are available on the Minnesota Department of Human Services public website: <https://edocs.dhs.state.mn.us/lfsrver/Public/DHS-5227-ENG>

Forms will be available in Social Service Information System (SSIS).

### Indian Child Welfare Act Notice of Child Placement Proceeding (ICWA Notice)

**Question 1:** What is the purpose of the ICWA Notice? Why is the ICWA Notice required to be sent? Who must send the ICWA Notice?

**Answer 1:** Under the Bureau of Indian Affairs (BIA) Regulations, 25 C.F.R. § 23.11 and § 23.111, in any involuntary foster care, termination of parental rights, or other child custody proceeding (child placement proceeding) where there is reason to believe the child is an Indian child, the petitioner (e.g., county agency) is required to notify the child's parents, Indian custodian(s), tribe(s), and BIA Regional Office by registered/certified mail, return receipt requested, of the existence of the state court proceeding involving the child. The purpose is to notify the recipients of their rights and other information related to the proceeding (see Question 2). Consistent with federal regulations, the purpose of the ICWA Notice is stated on the first page of the document: "For a child believed to be an Indian child, a notice of a child placement proceeding must be sent to the Indian child's parent(s), Indian custodian(s), child's tribe(s) and the Bureau of Indian Affairs (BIA) Midwest regional director. " [25 C.F.R. § 23.11; 25 U.S.C. § 1912]

**Question 2:** Does federal law specify the content of the ICWA Notice?

**Answer 2:** Yes. The content of the ICWA Notice is specified under 25 C.F.R. § 23.111. Consistent with federal regulation, the ICWA Notice includes:

- information about the identity of the child's parents, grandparents, relatives, and tribe(s) so the tribe(s) can determine whether the child is enrolled or eligible for membership in a tribe
- date, time, and location of the court hearing
- type of court proceeding, including Child in Need of Protection and/or Service (CHIPS), permanency, or third-party custody
- potential outcomes or consequences of the court proceedings
- rights of the parents and tribes, including the right to an attorney, right to notice of hearings, additional time to prepare, right to intervene as a party, and to request transfer to tribal court; and
- copy of the petition must be attached.

**Question 3:** The ICWA Notice includes a “confidentiality notice” stating that the form includes confidential information available only to parties and participants, not the public. Is the confidentiality notice needed on all of the pages?

**Answer 3:** Under the BIA Regulations, 25 C.F.R. § 23.111(d)(ix), the information in the ICWA Notice is confidential. To ensure the Notice remains confidential, a “Confidentiality Notice” is included on the first page. It is not required to be on all the pages, so the ICWA Notice was revised so the confidentiality notice is on page one.

**Question 4:** When a tribe requests information about their children, is a release of information required before I can share information with a child’s tribe?

**Answer 4:** No. A release of information from an Indian child’s parent is not required before a case worker can share case information with an Indian child’s tribe(s). When a child’s tribe(s) or the Bureau of Indian Affairs requests information from a county and/or private licensed child-placing agency, the responsible agency is required to respond to the request within 14 business days. [25 U.S.C. § 1912 (c) and 25 C.F.R. § 23.141]

**Question 5:** Is the ICWA Notice asking an Indian child’s tribe(s) to respond back to the county agency so the county knows if a child(ren) is eligible for membership?

**Answer 5:** No. The tribe has no obligation to respond back to a county agency when they receive an ICWA Notice, except to acknowledge receipt of the notice and return the receipt. In addition to sending the ICWA Notice, the petitioner (e.g., county agency) should send a separate written request to the tribe(s) asking the tribe to determine and notify the agency and court whether the child is enrolled or eligible for membership. To assist with that determination, and as required under the BIA Regulations, 25 C.F.R. § 23.111, the ICWA Notice includes a genogram template in which the petitioner (e.g., county agency) must provide identifying information about the child’s parents, grandparents, and other direct lineal ancestor information.

**Question 6:** In what types of proceedings must the petitioner (e.g., county agency) send the ICWA Notice?

**Answer 6:** Under the BIA Regulations, 25 C.F.R. § 23.11, the ICWA Notice must be sent by the petitioner (e.g., county agency) in any “involuntary proceeding” involving a child believed to be an Indian child. The BIA Regulations define “involuntary proceeding” to mean “a child custody proceeding in which the parent does not consent of his or her free will to the foster care, preadoptive, or adoptive [placement] or termination of parental rights, or in which the parent consents to the foster care, preadoptive, or adoptive placement under threat of removal of the child by a state court or agency.” [25 C.F.R. § 23.2] A “foster care placement” is defined as any action removing a child from the care of the parent or Indian custodian “where the parent or Indian custodian cannot have the child returned upon demand.” [25 C.F.R. § 23.2] And, “upon demand” means “the parent or Indian custodian can regain custody of the child simply upon verbal request, without any formalities or contingencies.”

Applying those federal definitions to Minnesota law and proceedings means that the ICWA Notice must be sent in the following types of voluntary and involuntary proceedings, each of which may result in removal of the child from the care of the parent where the parent may not be able to have the child returned upon demand:

- Emergency protective care
- Truancy or runaway
- Voluntary foster care placement
- Involuntary foster care placement
- Transfer of temporary custody
- Transfer of permanent legal and physical custody to a relative
- Transfer of permanent legal and physical custody to agency
- Termination of parental rights
- Adoption
- Third party custody

**Question 7:** Are the potential consequences of the type of court action required to be included in the ICWA Notice? If so, could all of the potential consequences be stated on the form and workers do not need to check which apply? Which actions should a county worker check when a CHIPS action is the first step that could lead to transfer of permanent custody or termination of parental rights?

**Answer 7:** Yes, potential consequences must be included in the ICWA Notice. [25 C.F.R 23.111(d)(viii)] The ICWA Notice has been revised to include all potential types of court proceedings organized by CHIPS, permanency, and third party custody (family court) [Minn. Stat. §257C]. County workers should place a check mark next to the type of currently existing proceedings (e.g., CHIPS EPC and/or CHIPS involuntary foster care). If the case later moves to permanency, which is a separate court proceeding, a new ICWA Notice is required to be sent and at that time a permanency option would be checked.

**Question 8:** The ICWA Notice only requires information on parent member and child so it should be simple for a tribe to look up whether a parent is a member. What happens if a county worker is not able to complete the genogram with this notice as I understood that the BIA regulations rejected the genogram requirement?

**Answer 8:** The BIA did not reject the genogram. The “BIA Notice of Child Custody Proceeding for Indian Child” sample form includes a version of a genogram. We based our genogram on the BIA sample notice. A general genogram or family tree diagram was not sufficient to meet the new BIA regulations so a new ICWA/MIFPA genogram was created and should be attached to the ICWA Notice.

The BIA regulations require that the ICWA Notice includes parent, grandparent and other direct lineal ancestor information. Each tribe establishes enrollment and membership eligibility and

an Indian child's parent(s) membership status may or may not be included in determining eligibility for purposes of ICWA.

The notice requirements for ICWA child placement proceedings include:

1. Child's name, birthdate and birthplace
2. All names known of the parents, parents' birthdates and birthplaces, and tribal enrollment numbers if known
3. If known, the names, birthdates, birthplaces, and tribal enrollment information of other direct lineal ancestors if a biological parent is a member, and
4. Name of each Indian tribe in which the child is a member (or may be eligible for membership if a biological parent is a member). [25 C.F.R. § 23.111 (d) (2) (3) and (4)]

Provide an Indian child's tribe with as much information as possible at the time of the ICWA Notice. Continue to update the genogram as more information is learned and send the updated information to the tribe. It is not uncommon that an Indian child's potential tribe determines a child is not enrolled or eligible for membership based on incomplete tribal lineage information. When more information is learned the tribe may make a different determination. Tribes also change enrollment and membership eligibility criteria.

**Question 9:** Are the hearing notices that court administration staff are required to send to the tribe, parents, and Indian custodian per Minnesota Rules of Juvenile Protection Procedure [Minn. R. Juv. Prot. P. 32.03, subd. 2], a duplication of the ICWA Notice that the county agency is required to send?

**Answer 9:** No. While there are some similarities in the notices, the notices differ by:

1. The entity that is required to send the notice
  - a. The county agency is required to send the ICWA Notice of a pending child placement proceeding. This notice must be sent and received by all parties 10 days prior to a court hearing.
  - b. The court is required to send notice of a court hearing once it has been scheduled.
2. Who receives the notice?
  - a. The ICWA Notice must be sent to the parent(s), Indian custodian(s), all of the Indian child's potential tribes, and the BIA Midwest Regional Director.
  - b. Each court hearing notice must be sent to the child, the child's parents, Indian custodian(s), Indian child's tribe, guardian ad litem, child's legal custodian, county attorney, petitioner (e.g., county social services agency), foster parent, and any other parties, participants, and attorneys involved in the proceeding.
3. Timing of the notice
  - a. For the ICWA notice, no foster care placement or termination of parental rights proceeding may be held until at least 10 days after receipt of the notice by the parent (or Indian custodian) and by the tribe (or by BIA). The parent, Indian custodian, and tribe each have a right, upon request, to be granted up to 20 additional days from the date upon which notice was received to prepare for the proceeding.

- b. For the court notice, the summons and petition are served either at or before the emergency protective hearing or at least three days prior to admit/deny hearing. Thereafter, notice of all future hearings must be delivered at the close of the current hearing or sent at least five days prior to the hearing.
4. Content of the notice
  - a. For the ICWA Notice, see 25 C.F.R. § 23.111 for fifteen notice requirements.
  - b. For the court notice, see Minn. Juv. R. Prot. P. 32.03, subd. 2.
5. Method of service
  - a. For the ICWA notice, registered or certified mail, return receipt is required. No other method of service is allowed.
  - b. For the court notice, if the initial hearing is emergency protective hearing, written notice is not required to be served. Instead, the court administrator or designee, shall use whatever method is available, including, but not limited to, phone calls, personal service, the E-Filing System or email or other electronic means. For admit/deny hearings, the court administrator shall serve notice of the hearing through E-Filing System or personal service, U.S. mail, email or other electronic means. For all subsequent hearings, written notice is required to be served at the close of the current hearing or served by US mail or e-Filing System.

**Question 10:** Are the ICWA and MIFPA notices compatible with/meant to populate from MCAPS (Minnesota County Attorney Practice System) and if so, are there fields in MCAPS that will accommodate all of the information or are the notices to be completed manually?  
Note: MCAPS is a software program.

**Answer 10:** The ICWA and MIFPA Notices are the responsibility of the petitioner (e.g., county social services agency). The notices are available on the Minnesota Department of Human Services public website and will be available in SSIS.

**Question 11:** Must the ICWA and MIFPA Notices and return receipts be filed with the court?

**Answer 11:** Under the BIA Regulations, the petitioner (e.g., county social services agency) must file a copy of each ICWA notice in the court file as soon as the notice is sent. The Petitioner must file a copy of each return receipt in the court file as soon as it is received.  
[25 C.F.R. § 23.111(a) (2)]

MIFPA Notices are NOT to be filed with the court. The MIPFA Notices are to be documented in SSIS, including scanned copies of the actual notices as attachments, in the electronic case file.

**Question 12:** Are county workers required to fill out and send the ICWA and MIFPA Notices forms?

**Answer 12:** Yes. In cases where the county social services agency is the petitioner, then the county worker is responsible for completing and sending both notices. If someone other than

the county agency is the petitioner, that person is responsible for completing and sending the notices.

**Question 13:** Some counties are already complying with the requirement to send an ICWA Notice using existing documents created by the county that comply with ICWA and Code of Federal Regulations (CFR). Can they continue to use those documents?

**Answer 13:** We recommend that counties use our DHS approved notice documents. If a county wants to continue to use a notice form they developed, we recommend the county request a review by state staff for compliance with federal notice requirements. The purpose of providing a template for ICWA and MIFPA Notices is for consistent statewide application of federal and state notice requirements for Indian children.

**Question 14:** In many counties, it is the county attorney's office who sends out the ICWA Notice of child custody proceeding. However, those offices do not have access to SSIS. Will these forms be made available to county attorneys to use?

**Answer 14:** Yes. The ICWA and MIFPA notices are available on the Minnesota Department of Human Services public webpage. .

**Question 15:** Why doesn't the ICWA Notice include a court file number, and date and time of the court hearing?

**Answer 15:** Initially it was thought that the ICWA Notice would be sent prior to a court hearing being scheduled. After more discussion and consultation, we understand the ICWA Notice will be sent after a hearing has been scheduled. The ICWA Notice has been revised and includes court file number, date, time and location of the court hearing.

**Question 16:** Why do I need to include a genogram with an ICWA Notice?

**Answer 16:** Inclusion of a genogram is required so the child's tribe(s) can determine if the child is enrolled or eligible for membership and, if so, whether they wish to intervene. A genogram is required under the BIA Regulations at 25 C.F.R. 23.111(d) (1) (2) (3) and (4). The genogram must be attached to each ICWA and MIFPA Notice and attached to a separate letter a county agency sends to each of an Indian child's potential tribes requesting the tribe respond in writing to an Indian child's relationship to the tribe (enrolled member, eligible for membership, not eligible). In an effort to reduce duplication of effort, the genogram form was moved from within each notice document and created as a separate document to be attached to each notice. The genogram can be used for multiple purposes.

## Minnesota Indian Family Preservation Act Notice to Indian Child's Tribes (MIFPA Notice)

**Question 17:** What is the purpose of the MIFPA Notice?

**Answer 17:** In an effort to ensure immediate and ongoing contact by county social service and private licensed child-placing agencies with a child's Indian tribe, the Minnesota legislature created the MIFPA statute that requires additional notice beyond those required by the federal BIA Regulations. Under MIFPA, the following additional notice requirements exist:

a. 24-hour notice of a screened in report: County social services has reason to believe a child protection report involves an Indian child(ren).

[Minn. Stat. § 626.556, subd. 10(b) (5)]

b. Seven-day voluntary services notice: County social services or private agency staff began providing voluntary services to an Indian child(ren).

[Minn. Stat. § 260.761, subd. 2(b)]

c. Seven-day voluntary placement notice: County social services or private agency staff placed an Indian child(ren) in voluntary foster care.

[Minn. Stat. § 260.765, subd. 2.]

d. Continued voluntary placement review: An Indian child was voluntarily placed in foster care and a request is being made for an additional 90 days in voluntary placement.

[Minn. Stat. § 260.765, subd. 3.]

**Question 18:** Are the MIFPA notices to be filed with the court?

**Answer 18:** No, MIFPA notices are not to be filed with the court. See answer to question 10.

**Question 19:** Can county agency's use the MIFPA notice as an ICWA notice or vice versa?

**Answer 19:** No. The ICWA and MIFPA notices are two separate documents with different purposes and different requirements for content, service, and filing. The MIFPA notice does not meet the federal ICWA notice requirements.

**Question 20:** When a team of child protection workers are completing the MIFPA notices to an Indian child's tribe(s), who completes the form?

**Answer 20:** On the final version of the MIFPA notice there is space to identify which worker completed the phone call and which worker sent the follow up email or fax.

**Question 21:** Does the MIFPA notice meet the requirement for inquiry regarding an Indian child's membership status with a tribe?

**Answer 21:** No, that is not the purpose of the MIFPA notice. The tribe is not obligated to respond to a county's notice of services to an Indian child. A tribe may verbally or in an email respond by saying the child is eligible or not eligible. County and private agency are still required to request formal communication from an Indian child's tribe that provides the county or private agency with an Indian child's membership status. It is recommended that county and private agencies send a letter with an attached genogram requesting membership status.

For questions on the new ICWA and MIFPA Notice forms, email:

[DHS.ICWA.MIFPA@state.mn.us](mailto:DHS.ICWA.MIFPA@state.mn.us)