

United Tribes of Michigan

5453 Hughston Rd, Harbor Springs, Michigan 49740
Phone: 517-802-8650 --- Email: fettawa@charter.net

Frank Ettawageshik, Executive Director

RESOLUTION # 035-10-13-2014

United Tribes of Michigan support for Technical Amendments to Michigan Indian Family Preservation Act by the Michigan Legislature

WHEREAS, the membership of United Tribes of Michigan (UTM) is open to all of the twelve federally recognized tribes located in Michigan; and

WHEREAS, the organization provides a forum for the Tribes in Michigan to address issues of common concern and is committed to join forces to advance, protect, preserve and enhance the mutual interests, treaty rights, sovereignty, and cultural way of life of the sovereign Indian Tribes of Michigan throughout the next seven generations; and

WHEREAS, UTM accepts the mission to engage, as a matter of mutual concern, issues that impact the health, security, safety, and general welfare of Native Americans; and

WHEREAS, UTM recognizes that there is no resource more vital to continued existence, vitality and integrity of our Indian Nations than our children; and

WHEREAS, UTM recognizes that there has been continuing inconsistency in the application of the Indian Child Welfare Act of 1978 (ICWA) by officials within the State of Michigan and that additional clarification and reinforcement of ICWA's policies may be enacted into state law; and

WHEREAS, a broad coalition of stakeholders interested in the welfare of Indian children and promotion of ICWA developed language for the Michigan Indian Family Preservation Act (MIFPA) to clarify and heighten awareness of ICWA in the State of Michigan which was enacted by the Michigan legislature as Public Act 565 of 2012; and

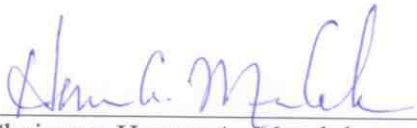
WHEREAS, passage of MIFPA into state law increased compliance with ICWA

within the State to better protect Indian Nations' interest in promoting the health and welfare of our children; and

WHEREAS, since the passage of MIFPA it has come to the attention of UTM that certain technical amendments are needed to the law to ensure consistent application of MIFPA and the continued protection of Indian children throughout the state.

THEREFORE, BE IT RESOLVED, that the United Tribes of Michigan declares its' official support to release these technical amendments to the Michigan Indian Family Preservation Act, attached to this Resolution as Exhibit I, to the Department of Human Services Director, Maura D. Corrigan, for consideration to forward to the Department of Human Services' Legislative Affairs Office for introduction to the Michigan legislature.

Adopted by a vote of 10 in favor, 0 against, 0 abstaining, at a meeting of the United Tribes of Michigan held on October 13, 2014.



Chairman Homer A. Mandoka
UTM President



Chairman Fred Kiogima
UTM Secretary

Exhibit I
to Resolution #035-10-13-2014

1. MCL 712B.7(6) says “In any state court child custody proceeding, an Indian child, the Indian custodian of the child, and the Indian child’s tribe have a right to intervene.

Change to: “In any state court child custody proceeding of an Indian child, the Indian custodian of the child, and the Indian child’s tribe have a right to intervene . . .”

2. MCL 712B.13(1) says that “if both parent or Indian custodian voluntarily consent to . . . adoptive placement or the termination of his or her parental rights for the express purpose of executing a release under section 28 of chapter X, or consent under section 43 of chapter X, the following requirements must be met:”

Change to:

- a) The reference to 710.28 and 710.45 should be “section 29” and “section 44.”
 - b) Both parents or an Indian custodian does not apply to “adoptive placement or termination of parental rights” under the adoption code. Rather, it should say, “if a parent consents . . .” This can be remedied by clarifying subsection 712B.13(1) as follows: “If both parents or Indian custodian voluntarily consent to a petition for guardianship under section 5204 or 5205 of the estate and protected individuals code, 1998 PA 386, MCL 700.5204 and 700.5205, or if a parent consents to adoptive placement or the termination of his or her parental rights for the express purpose of adoption by executing a release under section 29 of chapter X or a consent section 44 of chapter X, [year and PA number], MCL 710.29 and MCL 710.44, the following requirements must be met: . . .”
3. MCL 712B.13(2)(e) says that the parent has a “right to petition to terminate the voluntary placement or consent at any time.” However, MCL 712B.13(3) makes it very clear that a consent can be withdrawn at any time before entry of a final order of adoption by filing a written demand requesting the return of the child.”

Change to: Make this consistent with MCL 712B.13(3) by changing “petition” to “**written demand**”.

4. MCL 712B.13(3) says that “if the placement is for purposes of adoption, a consent under subsection (1) of the Indian child’s parent or Indian custodian must be executed in conjunction with either a consent to adopt . . . or a release . . .” An Indian custodian, as loosely defined in MIFPA, cannot consent to the termination of a parent’s rights.

Change to: The phrase “**or Indian custodian**” needs to be **removed from both the first and second sentences** of this subsection.

5. MCL 712B.15(1) says that “If an Indian child is the subject of a child protective proceeding under section 2(b) of chapter XIIA, including instances in which the parent or Indian custodian executed a release under section 28 of chapter X during the pendency of that proceeding, . . .”

Change to: Remove “**...or Indian custodian...**” so the sentence reads as follows: “If an Indian child is the subject of a child protective proceeding under section 2(b) of chapter XIIA, including instances in which the parent executed a release under section 28 of chapter X during the pendency of that proceeding, . . .”

6. MCL 712B.15(2) states, “An Indian child may be removed from a parent or Indian custodian, placed into a foster care placement, or, for an Indian child already taken into protective custody, remain removed from a parent or Indian custodian pending further proceedings, only upon clear and convincing evidence, that includes testimony of at least 1 expert witness who has knowledge of child rearing practices of the Indian child’s tribe, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that the active efforts were unsuccessful, and that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The active efforts must take into account the prevailing social and cultural conditions and way of life of the Indian child’s tribe.”

Change to: The Court is supposed to make the active efforts finding based on evidence from the witnesses. The Qualified Expert Witness (QEW) is to testify to

knowledge of child rearing practices of the Indian child's tribe. Amend this section with language from ICWA for the QEW's testimony.

7. Need to add "**voluntary**" in front of guardianship in MCL 712B.25(5) so that it is clear the parents can only revoke voluntary guardianship and not involuntary guardianship.
8. MCL 712B.25(6) should refer not only to ICWA but also to MIFPA
9. MCL 712 B. 3(a) amend the definition of active efforts to list all the required efforts but not limit efforts to only those listed by adding the phrase "but are not limited to" before "all of the following".