

# Position Statement

## For 2023 Session

### Proposal

**Issue:**

Counties and Tribes want to uphold the spirit and letter of the law for ICWA and MIFPA. This is complicated by the fact that there are many unique working relationships with 87 counties potentially interacting with 11 Tribal Nations. Further complicating this matter is that many counties work with very small populations of persons with Native heritage. In addition to concerted efforts from counties to meet the spirit and letter of the law, we also need resources dedicated to education and training and the ability to foster collaborative and family strengthening focused relationships. MACSSA supports establishing a more timely and collaborative process that includes working with community-based facilitators that are available to assist in relationship building, problem-solving and address issues. The current system of redirecting funding for non-compliance is counterintuitive, leaving both counties and tribes without the necessary resources to support the work of preserving and supporting families.

**Implementation Strategy:**

Identify a contracted provider to offer consultation and technical assistance for Counties in real time, to work through the ICWA and MIFPA complexities and ensure compliance to the law. **By investing resources locally, we will continue to improve the actual work of serving Indigenous people and reducing disparities. The locally sourced provider would work collaboratively with the MN ICWA Unit to meet both the letter and spirit of the law.**

ICWA/MIFPA reviews will focus on current efforts, be strengths-based, contain a qualitative element, such as interviewing the worker, as this will lead to a clearer picture of the type and level of services provided to our Native children and families.

While counties support 100% compliance, elimination of the withholding of ICWA funds for less than 100% compliance is requested. County funding continues to decrease, while additional unfunded requirements are added, and promised decreased requirements are unfulfilled (MNCHOICES). The loss of funds is counterintuitive when many counties struggle with funding adequate staffing for child welfare cases. Maintaining a PIP status for less than 100% compliance is appropriate.

### Systemic Priority Alignment (highlight all that apply and explain why)

- Equity
- Integrated Services
- Fiscal Framework

From the GARE Toolkit (See [www.racialequityalliance.org](http://www.racialequityalliance.org)): What are the racial equity impacts of this particular decision? Who will benefit from or be burdened by it? Are there strategies to mitigate unintended consequences?

**Comments:**

Counties desire to provide quality services to children and families of Native heritage. Through increased technical assistance and consultation between the ICWA unit and counties, Native families will receive services matching both the letter and spirit of the law. Many counties do not receive the full ICWA funding due to not meeting 100% compliance. The audit process is quantitative only and misses the important qualitative of staff and the spirit of the law. The loss of funding impairs counties' ability to support staffing, which in turn leads to higher caseloads and decreased service delivery to all families.

## Relevant Committee (highlight all that apply and explain why)

- **Adult Services**
- **Behavioral Health**
- **Children's Services**
- **Equity**
- **Healthcare**
- **Modernization**
- **Policy**
- **Self-Sufficiency**

### Why:

The stated intent of Congress under ICWA was to "protect the best interests of Indian children and to promote stability and security of Indian tribes and families" (25 USC § 1902). Counties need both real time technical assistance and access to additional resources to meet the letter of the law as the requirements of ICWA and MIFPA, provide ongoing training and education to staff and build strong relationships with tribes to address historical trauma and the lengthy and complex nature of this work. This level of assistance will assure that the needed notifications and required paperwork accompany the good service provided by county social workers.

### Rationale/Background:

The 2007 Tribal/State Agreement notes the history related to the passing of the ICWA Act of 1978. At the time both Indian tribes and child welfare professionals concerns as to the nationwide rate of Indian children being placed in foster care, ten to twenty times that for non-Indian children. The result was the Indian children often losing familial, tribal and cultural heritage.

"Public Law 95-608, the federal Indian Child Welfare Act of 1978, codified at 25 U.S.C. §§ 1901 *et seq.*, was passed to remedy this problem of disproportionately large numbers of Indian children being placed in foster care. The law recognized "that there is no resource ... more vital to the continued existence and integrity of Indian tribes than their children: and that there has been a failure by non-Indian agencies "to recognize the essential tribal relations of Indian people and the culture and social standards prevailing in Indian communities and families." 25 U.S.C. § 1901."

"In passing the Indian Child Welfare Act, Congress stated:

It is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operations of child and family service programs. 25 U.S.C. § 1902."

"Minnesota established the above concepts as state policy and passed the Minnesota Indian Family Preservation Act (Minn. Stat. §§ 260.751 to 260.835) in 1985 to strengthen and expand parts of the federal act. The Minnesota law and its amendments emphasize the State's interest in supporting the preservation of the tribal identity of an Indian child and recognize tribes as the appropriate entities to provide direction to the State as to the best interests of tribal children. In addition, Minnesota child protection statutes must be construed consistently with the Indian Child Welfare Act. See Minn. Stat. § 260.168 (2006)."

With this background, it is evident that what was true then is still true now; both Indian tribes and child welfare professionals are still concerned as to the high rate of Indian children being placed in foster care. Additionally, both seek to keep Indian children their families intact. To do so, counties must have the guidance and direction of the tribes. While this sounds simple, what becomes infinitely more complicated is how we achieve the best outcomes for Indian children and their families in such a complicated child welfare system. We know it is best done when we have solid relationships with our tribal leaders and seek to reach the same goal together; that of serving Indian children and families well. The current guidance for workers is 7 pages and while it is helpful guidance, there are many "if-then" type situations that require real-time guidance from experts who are steeped in both the letter and the spirit of the law. Counties desire to uphold both, but to do so requires a higher level of support than is currently provided. We believe this is possible if we invest in local, expert resources that exist in our tribal partners. Doing so will prove we are dedicated to serving our Indian families well.

