

# Active Efforts

## A Child Welfare Practitioner's Guide for Meeting the WICWA Active Efforts Requirement



**MCWIC**  
Midwest Child Welfare  
Implementation Center

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# Wisconsin Indian Child Welfare Act Active Efforts Requirement

The following Active Efforts Guideline was developed under the Wisconsin Indian Child Welfare Act State Advisory Board: Active Efforts Sub-committee.

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## Best Interest of an Indian Child

In 2009 the Wisconsin State Legislature unanimously passed the Wisconsin Indian Child Welfare Act (WICWA). The bill was signed into law on December 7, 2009.

In the Wisconsin Children's Code, Chapter 48, the State of Wisconsin declares the best interest of the Indian child shall be in accordance with the federal and state Indian Child Welfare Acts (ICWA). The legislated policy for the State further establishes that courts and agencies responsible for child welfare cooperate fully with Indian tribes to en-

sure that the federal and state Acts are enforced.

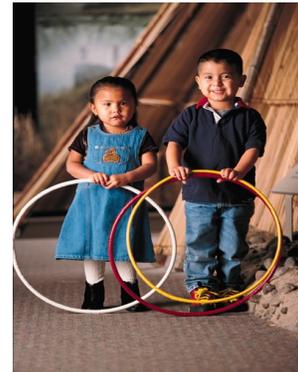
Additionally it is the state's policy to protect the best interest of Indian children and promote the stability and security of Indian tribes and families. Among the practices utilized in preventive placement, and out of home care, as required under WICWA, it is imperative the placement reflect the Tribes' unique values and, "is best able to assist the Indian child in establishing, developing and maintaining a political, cultural, and social relation-

ship with the Indian child's tribe and tribal community." Wis. Stat. §48.01(2)(b)(2)

## Agency Responsibility for Active Efforts

Unlike the ICWA's undefined active efforts requirement, WICWA clarifies, with specificity, when in the course of an action a court must make the finding that active efforts have been made. Prior to the enactment of the WICWA, practitioners had little guidance as to what "active efforts" were other than the efforts had to involve the particular tribe or tribes in some way, and that "active efforts" were something more than "reasonable efforts." With the advent of the WICWA, specifically Wis. Stat. § 48.028(4)(g), practitioners now have an articulated "active efforts" standard and a specific list of activities that should be conducted, or at least attempted, in order to meet that standard in both CHIPS and TPR cases. Pursuant to Wis. Stat. § 48.028(4)(g)1, that standard is defined as:

**"an ongoing, vigorous, and concerted level of case work ...made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe and that utilizes the available resources of the Indian child's tribe, tribal and other Indian child welfare agencies, extended family members of the Indian child, other individual Indian caregivers, and other culturally appropriate service providers."**



## Active Efforts Guidelines

Nine specific activities are listed in Wis. Stat. § 48.028(4)(g)1.a.-h. These activities illustrate for the practitioner what "active efforts" look like. Practitioners should also be mindful of the requirement that if any of the nine activities was not conducted, documentation of the reason or reasons the particular activity was not conducted must be submitted to the court, (Wis. Stat. § 48.028(4)(g)2.) It is also im-

portant to acknowledge that it is not the obligation of the tribes to meet the active efforts requirement, but the petitioner's obligation to seek and request assistance from the child's tribe to assist the petitioning agency in meeting the requirements.

The following Active Efforts Table provides a guideline to implementing the Active Efforts requirements. Each component offers suggested activities

that may assist the child welfare practitioner in meeting the requirement, which may provide benefits to the petitioning agency as it moves through the WICWA case.

**Active Efforts  
Wis. Stat. 48.028 (4) (g)  
And 938.028(4)(f)**

**Recommended Activities for  
Petitioning Agency**

**Potential Benefits of  
Tribal Contact**

a) 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 were requested to evaluate the circumstances of the Indian child's family and to assist in developing a case plan that uses the resources of the Tribe and of the Indian community, including traditional and customary support, actions, and services, to address those circumstances.

**Request tribal agency to assist in assessing and developing the case**

**A. Evaluate the circumstances of the Indian child's family**

- ◆ Contact Tribe(s): call each Tribal social Services/Child Welfare Agency(ies)
- ◆ Ask for tribal assistance in completing all state assessment/plans requirements:
  - Safety Plan
  - Confirming Safe Environment Plan
  - Child and Adolescent Needs and Strengths Tool

**B. Develop a case plan**

- ◆ Ask whether tribal child welfare agency staff is able to assist in developing a case plan in conjunction with county agency.
- ◆ Ask if there are prevailing social and cultural standards or specific resources, programs, or services, that may help in providing and developing a case plan.
- ◆ Request a list of resources Tribe(s) might have.

Access to informative material on child rearing practices

Access to copy of tribal children's codes particularly sections referring to placement preference and definition of relatives (check Tribal Website)

Knowledge of familial structure

Tribal involvement in meetings

Awareness of Tribe's ability and resources to assist the agency in providing active efforts

b) Representatives of the Indian child's Tribe were identified, notified, and invited to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and their advice was actively solicited throughout the proceeding.

**Invite representatives of child's Tribe(s) to participate in custody proceeding at earliest point and solicit active advice throughout proceeding**

**A. Ensure representatives of child's Tribe(s) are notified and invited to participate at the earliest point and throughout the proceeding**

- ◆ Provide information to the Tribe(s) regarding circumstances leading to county agency involvement

**B. Actively request from the Tribe(s), advice throughout the proceeding**

- ◆ Keep Tribe(s) updated on circumstances and/or activities

Access to updated tribal information including : contact information, family information and additional resources

Actively updated on circumstances and progress in case

**Active Efforts  
Wis. Stat. 48.028 (4) (g)  
And 938.028(4)(f)**

**Recommended Activities for  
Petitioning Agency**

**Potential Benefits of  
Tribal Contact**

c) Extended family members of the Indian child, including extended family members who were identified by the Indian child's Tribe or parents, were notified and consulted with to identify and provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.

**Notify and consult with extended family members to provide structure and support**

**A. At the initial contact with the tribal child welfare agency, ask whether there may be additional extended family members that might assist in providing support to the child.**

- ◆ Reference the eWiSACWIS Child's Biological Family History form
- ◆ Continue to update references on the form using Tribes, and immediate extended family for accuracy and new information

**B. Consult and solicit support from family members as they are identified to improve the ability to fulfill placement preferences.**

- ◆ Initiate extended family search as any other child welfare case.
- ◆ When an Indian child may have significant relations and contact with two or more Tribe(s) include that information.

**Access to additional information for family tree and placement preferences**

**Ability to assure cultural connections are made and that family support was incorporated**

**Improve ability to fulfill placement preferences**

d) Arrangements were made to provide natural and unsupervised 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 arrangements for transportation and other assistance to enable family members to participate in that interaction.

**Providing natural and unsupervised family interaction**

- ◆ Initiate Family Interaction Plan (See On-going Standards), in consultation with the Tribe(s)
- ◆ Identify natural setting within the family and/or Tribe(s) that will ensure the child's safety for the interactive plan. Initiate efforts to provide transportation for family, extended family participation
- ◆ Include child's participation in tribal activities such as social gatherings, customary spiritual related activities that include the child's family members or extended family

**Access to information on tribal resources and activities**

**Tribe(s) may have alternative interaction plan, may have extra/other information regarding family/relative, visitation and transportation**

**Ability to ensure cultural connection and support family relationships**

<p style="text-align: center;"><b>Active Efforts Wis. Stat. 48.028 (4) (g) And 938.028 (4)(f)</b></p>	<p style="text-align: center;"><b>Recommended Activities for Petitioning Agency</b></p>	<p style="text-align: center;"><b>Potential Benefits of Tribal Contact</b></p>
<p>e) All available family preservation strategies were offered or employed and the involvement of the Indian child's Tribe was requested to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child's Tribe.</p>	<p><b><u>Available culturally appropriate family preservation strategies were employed</u></b></p> <ul style="list-style-type: none"> <li>◆ Continue to collaborate with the child's Tribe(s) or designated tribal agency (cies) to provide cultural strategies suggested by the child's Tribe(s)</li> <li>◆ Consult with the child's Tribe(s) regarding cultural activities that might assist in supporting family preservation</li> <li>◆ Become familiar with Tribe(s) web-site, community conferences, or other cultural activities</li> <li>◆ Consult with Tribes to incorporate identified preservation strategies in the case plan and family engagement</li> <li>◆ Actively assist the family to engage in identifying preservation strategies</li> </ul>	<p><b>Access to information on Tribal resources and activities to ensure provisions of culturally appropriate family preservation strategies</b></p> <p><b>Gain knowledge of available tribal resources or federal programs associated with Tribe(s) such as Indian Health Services, Tribal AODA, Tribal Youth Programs, Tribal Education Programs</b></p>
<p>f) 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 were identified, information about those resources was provided to the Indian child's family, and the Indian child's family was actively assisted or offered active assistance in accessing those resources.</p>	<p><b><u>Provide community resources and information to Indian child's family and actively access those resources</u></b></p> <ul style="list-style-type: none"> <li>◆ Become familiar with culturally appropriate Tribal resources of the child's Tribe(s), or those that exist near the county agency</li> <li>◆ Actively assist family in accessing services from county agency programs, community culturally appropriate programs, and tribal programs</li> </ul>	<p><b>Access to information on Tribal Resources</b></p> <p><b>Knowledge of available community and federal programs that are available to Tribes and Tribal members</b></p>

<p style="text-align: center;"><b>Active Efforts</b> <b>Wis. Stat. 48.028 (4) (g)</b> <b>And 938.028 (4)(f)</b></p>	<p style="text-align: center;"><b>Recommended Activities for</b> <b>Petitioning Agency</b></p>	<p style="text-align: center;"><b>Potential Benefits of</b> <b>Tribal Contact</b></p>
<p>g) Monitoring of client progress and client participation in services was provided.</p>	<p><b><u>Regularly identify barriers to client progress and participation and actively assist to overcome barriers</u></b></p> <ul style="list-style-type: none"> <li>◆ Initiate frequent contact with the client and service providers</li> <li>◆ Consult with the family and Tribe on potential barriers and identify culturally appropriate methods to overcome or address the issues.</li> <li>◆ Encourage and support family participation in meeting case goals</li> </ul>	<p><b>Gain tribal insight to assist with client progress and overcome barriers</b></p>
<p>h) A consideration of alternative ways of addressing the needs of the Indian child's family was provided, if services did not exist or if existing services were not available to the family.</p>	<p><b><u>Employ creative means to address needs of the family and child.</u></b></p> <ul style="list-style-type: none"> <li>◆ Discuss barriers to service implementation and service provision</li> <li>◆ Explore alternatives to service deficits. For example, use elder to conduct parenting and education.</li> <li>◆ Collaborate with family and Tribes to develop creative solutions.</li> </ul>	<p><b>Gain tribal involvement in creative problem solving</b></p>



## Meeting Active Efforts

The agency responsible for providing services to the family has a continuing obligation to make active efforts to provide remedial services and rehabilitative programs to the family through the duration of the action. To ensure that remedial and rehabilitative programs can be instituted in a culturally appropriate and timely manner, active efforts should commence when an Indian child comes to the attention of the state system. Because of the ongoing obligation to make active efforts, the WICWA requires the court to make this finding at multiple stages of the proceeding depending upon the type of proceeding.

- \* Fact Finding Hearing

- \* Dispositional Hearing
- \* Dispositional Order
- \* Permanency Hearing
- \* Extension Hearing

The Active Efforts table is designed to assist the petitioning agency in meeting that effort, and should not be considered inclusive, but should be regarded as a guideline to help understand the breath of meeting active efforts.

For further discussion or questions pertaining to Active Efforts please contact:

### **Bureau of Regional Offices:**

Northeastern Region  
Northern Region  
Southeastern Region  
Southern Region  
Western Region

### **Department of Children and Families:**

ICWA Consultant  
DCF Tribal Liaison

**Wisconsin Indian Child Welfare Act Resources  
and further information can be found at:  
<http://dcf.wisconsin.gov/>**

- \* *WICWA Desk Aid*
- \* *eWiSACWIS Desk Aid*
- \* *QEW Policy*
- \* *Wisconsin Tribal Contact Information*
- \* *National ICWA Contact information*
- \* *Professional Development Training*

#### **Judicare WICWA Information Link:**

<http://www.judicare.org/content.cfm?PageID=162>

- \* *WICWA Legal Curriculum*
- \* *WICWA Legal Practitioners Manual*
- \* *Tribal and State Resources Manual*

#### **WICWA Judicial Checklist**

<http://www.wicourts.gov/courts/programs/ccip.htm#4>

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“For all my children, grandchildren and great-grandchildren”