



# JUDICIAL COUNCIL OF CALIFORNIA

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OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR FAMILIES, CHILDREN & THE COURTS

## **ICWA Information Sheet: Delinquency, Native American Identification and ICWA**

### **Duty of Inquiry**

The court and the probation department have a duty to inquire about the child's Indian status at the outset of all juvenile proceedings. (*In re. W.B.* (2012) 55 Cal. 4th 30, 40)

This duty is affirmative and continuing, and is triggered as soon as they determine that the child is in foster care or at risk of entering foster care (Welf. & Inst. Code § 224.3; CRC 5.480; CRC 5.481(a))

### **Significance of Native American Identification (regardless of ICWA application)**

Following inquiry, if a child and his/her family identify as Native American this is important **in all cases** for case planning and placement purposes. Native American children and their families may be entitled to a broad range of services which should be used whenever possible when developing case plans. You can find these services in your area by looking here

<http://www.courts.ca.gov/5807.htm> . Further, you are required to look to tribal members when seeking a foster care placement for an Indian child (ie a child who is a member or eligible for membership in a tribe) regardless of whether ICWA applies to the case. (Welf. & Inst. Code §§ 727.1 (a); 16501.1 (c))

### **When do ICWA requirements beyond inquiry apply?**

All of the remaining ICWA requirements such as notice, active efforts, qualified expert witness testimony and heightened evidentiary standards apply only when a child is either in foster care or at risk of entering foster care and one of the three additional factors apply:

1. The petition under Welfare and Institutions Code section 601 or 602 alleges only status offenses and no conduct which would be criminal if the child were over age 18. (This includes allegations such as a child refuses to obey the orders of a parent or guardian, is beyond parental control, violates age-based curfew ordinances, or is truant or disobedient in school or has engaged in underage drinking or underage possession of alcohol or tobacco because even though this conduct is prohibited in the Penal Code, such conduct would not be a crime if committed by an adult.) (*In re. W.B.* at 42);
2. The court has set a hearing to terminate parental rights (regardless of whether or not there was “criminal” conduct) (*In re. W.B.* at 59); or
3. The court has placed the child in foster care, or in an adoptive or pre-adoptive placement, due to abuse or neglect in the child’s home. (*In re. W.B.* at 60). In these situations, the court must make a specific finding that placement outside the home of the parent or legal guardian is based entirely on harmful conditions within the child’s home. (*In re. W.B.* at 59) Without such a specific finding it is presumed that the placement is based at least in part on the child’s criminal conduct. (*In re. W.B.* at 60) If there is such a finding, then ICWA requirements apply regardless of whether the conduct which brought the child before the court was criminal in nature.