



**Findings and orders must be based on sufficient supporting evidence, presented to the court by the agency.**

**General – when there is “reason to know” the child is an Indian child.**

- (1) **Counsel (25 U.S.C. 1912(b); Welf. & Inst. Code §317(a)(2):**
  - (a) The court appoints counsel for the Indian custodian (at any involuntary removal, placement, or termination proceeding).
- (2) **Continuance (25 U.S.C. 1912(a); 25 C.F.R. §23.112Welf. & Inst. Code §224.2(d) rule 5.482(a)):**
  - (a) The court continues the hearing on foster care placement or termination of parental rights, because the BIA and tribes have not received notice 10 days in advance of this hearing.
  - (b) The court grants the parent, Indian custodian, or Tribe 20 days to prepare for the hearing.
- (3) **Dismissal in Favor of Release to Noncustodial Parent/Indian Custodian (25 U.S.C. 1903(6)):**
  - (a) The court finds that the case can be dismissed, because the child can be released to an Indian custodian who is ready, willing, and able to care for the child.
- (4) **Scope of Testimony of Qualified Expert Witness (25 U.S.C. 1912(e); 25 C.F.R. §§23.121-23.122; Guidelines<sup>1</sup> G.2; Welf. & Inst. Code §224.6; rule 5.484(a)(1) and 5.485(a)(2)):**
  - (a) Are there particular conditions in the home that are likely to result in serious emotional or physical harm to the child?
  - (b) Is the parents conduct likely to result in serious physical or emotional harm to the child?
  - (c) If the answer is yes, can the conditions be alleviated and/or the parents persuaded to modify their conduct with the provision of active efforts and culturally appropriate services?
- (5) **Indian Child/Application of the Act (25 U.S.C. §1903(1) & (4); 25 C.F.R. §§23.2, 23.103, 23.107; Guidelines B.1 & B.2; Welf. & Inst. Code §224.1 (a) & (c); rule 5.480:**
  - (a) The court finds reason to know the child is an Indian child based upon (specify): \_\_\_\_\_, and concludes that the Act applies.
  - (b) The court finds, after the agency has inquired and the court has inquired, and all participants have confirmed on the record, that there is no information indicating that the child is an Indian child. The court concludes that the Act does not apply, but instructs the parties to inform the court if they receive any information providing reason to know the child is an Indian child.
- (6) **Jurisdiction (25 U.S.C. 1911 & 1922; 25 C.F.R. 23.110; Guideline F.1 & F.2; Welf. & Inst. Code 305.5; Rule 5.483):**
  - (a) The court finds that it has jurisdiction over the proceeding because:
    - (1) The court finds that the residence and domicile of the child are not on a reservation where the tribe exercises exclusive jurisdiction; AND
    - (2) The court finds that the child is not already under the jurisdiction of a tribal court. OR
  - (b) The court finds that it does not have jurisdiction because the child is under the exclusive jurisdiction of the tribal court. OR
  - (c) The court finds that the child is under the exclusive jurisdiction of the tribal court, but that there is a basis for emergency jurisdiction in accordance with 25 U.S.C. 1911.
- (7) **Transfer (25 U.S.C. 1911(b); 25 C.F.R. §§23.115-23.119; Guidelines F.2-F.6; Welf. & Inst. Code 305.5(b), 381 & 827.15; Rule 5.483):**
  - (1) The court has considered the request to transfer the child’s case to the tribal jurisdiction and other relevant evidence and:
    - (a) The court finds and orders that the child’s case is ordered transferred to the tribal jurisdiction of the \_\_\_\_\_ tribal court located at \_\_\_\_\_ (insert address):
      - (1) The receiving court shall direct whether and how physical custody of the child shall be transferred;
      - (2) The case file shall be transferred to the receiving court. The transferring court shall maintain at a minimum a copy of the order of transfer and the findings of fact.
    - (b) The request to transfer is denied because there is good cause not to transfer the child’s case due to the following circumstances:
      - (1) The tribal court has declined jurisdiction;
      - (2) The parent (specify): \_\_\_\_\_ opposes the transfer.
      - (3) The court finds in accordance with 25 C.F.R. §23.118 that there is good cause to deny the transfer (specify): \_\_\_\_\_
- (8) **Protective Custody Warrant If there is reason to know child is an Indian child (25 C.F.R. §23.113(d))**
  - (1) Emergency removal is necessary to prevent imminent physical damage or harm to the child;
  - (2) Appropriate steps have been taken to notify the child’s tribe, parents and Indian custodian;
  - (3) Efforts have been made to assist the parents or Indian custodian so that the child may be safely returned to their custody.

<sup>1</sup> The term “Guidelines” refers to the Guidelines for Implementing the Indian Child Welfare Act, December 2016, U.S. Department of the Interior, Office of the Assistant Secretary – Indian Affairs, Bureau of Indian Affairs available at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf>

\*This chart is based on laws in effect at the time of publication—1/1/2018. Federal and state laws can change at any time. Chart compiled by the Judicial Council of California’s Center for Families, Children & the Courts, Tribal/State Programs Unit 455 Golden Gate Ave., San Francisco, California 94102, (415) 865-7739, [cfcc@jud.ca.gov](mailto:cfcc@jud.ca.gov)

## Recommended ICWA Findings and Orders

### Initial Hearing

#### **Inquiry (25 C.F.R. §23.107; Guideline B.1; Welf. & Inst. Code §224.3; Rule 5.481(a)):**

- (1) The court finds that the social worker/probation officer has asked the child, if old enough, and his or her parents or legal guardians, and the following relatives, \_\_\_\_\_, whether there is information indicating the child is an Indian child.
- (2) The court, on the record, has asked the child, if old enough, and his or her parents or legal guardians, all participants in the proceedings, and the following relatives, \_\_\_\_\_, whether there is information indicating the child is an Indian child.
- (3) The parties are instructed to inform the court if they receive any information indicating that the child is an Indian child.

#### **ICWA-020:**

The mother, biological father, legal guardian, presumed father, alleged father, Indian custodian, other (specify): \_\_\_\_\_ were provided with a *Parental Notification of Indian Status* (form ICWA-020) and ordered to complete form ICWA-020 and to submit it to the court before leaving the courthouse today.

#### **Reason to know (25 C.F.R. 23.107(c); Guideline B.1; Welf. & Inst. Code 224.3(b)):**

- (1) The court finds that there is no information indicating or suggesting that the child is an Indian child. Unless new information is received indicating that the child is an Indian child, ICWA does not apply. OR
- (2) The court finds that there is information indicating or suggesting that the child is an Indian child and ICWA does or may apply; and
  - (a) The agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the Tribes where the child may be a member or eligible for membership to verify the child's status;
  - (b) Notice has been provided as required by law as discussed below; and
  - (c) The court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.

#### **Notice (25 U.S.C. 1912(a); 25 CFR 23.11 & 23.111; Guidelines D1-D7; Welf. & Inst. Code 224.2; rule 5.481(b)):**

- (1) The court finds notice has been provided to the child's parents, and Indian custodian if applicable, and all tribes of which the child may be a member or eligible for membership by sending a *Notice of Involuntary Child Custody Proceedings for an Indian Child* (form ICWA-030) with a copy of the petition by registered or certified mail with return receipt requested, and additional notice has been sent by first-class mail to the tribal chairperson unless the tribe has designated another agent for service. Proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor's status.
- (2) Unless there is a basis to take emergency jurisdiction, the court finds that notice was received at least 10 days in advance of the hearing;
- (3) The court finds either that the identity or location of the parent or Indian custodian or the tribe cannot be determined; notice has been provided to the specified office of the Secretary of the Interior. A copy of the notice sent and the return receipt has been filed with the court.

### Requirements to authorizing Detention or Removal When there is Reason to Know the Child is an Indian Child

#### **Emergency Jurisdiction (25 U.S.C. 1922; 25 C.F.R. 23.2 & 23.113; Guidelines C.1 – C.9; Welf. & Inst. Code 305.5(k)):**

- (1) The court finds that emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;
- (2) The petition or request for emergency removal or accompanying documents contains the information required 25 C.F.R. §23.113(d) including a statement of the efforts that have been taken to assist the parents or Indian custodians so that the Indian child may be safely returned to their custody;
- (3) The child's placement does \_\_\_\_\_ OR does not \_\_\_\_\_ conform to the placement preferences; and
- (4) The court sets an interim review hearing on \_\_\_\_\_ (no more than 30 days from date of emergency removal) to determine whether the emergency has ended.

#### **No Basis for Emergency Jurisdiction (ie. Does not meet the requirements set out in 25 C.F.R. 23.2 & 23.113 and Guidelines C.1-C.9)**

#### **Detriment (25 U.S.C. 1912(e); 25 C.F.R. §23.121(a),(c) & (d); Guideline G.1; Welf. & Inst. Code §361(c)(6); rule 5.484(a)):**

- (1) The court finds by *clear and convincing* evidence, including the testimony of one or more qualified expert witnesses, and evidence regarding the prevailing social and cultural practices that the continued custody of the child by the parent, legal guardian, or Indian custodian is likely to result in serious emotional or physical harm to the child.

#### **Qualified Expert Witness (25 U.S.C. §1912(e); 25 C.F.R. §§23.121 & 23.122; Guideline G.2; Welf. & Inst. Code §361.7(c); Rule 5.484(a)):**

- (1) The court finds \_\_\_\_\_ (name of witness) qualified to provide expert testimony on the issue of whether continued custody of the child by \_\_\_\_\_ (parent(s), legal guardian or Indian custodian) is likely to result in serious emotional or physical harm to the child;
- (2) The court finds that there was evidence regarding the prevailing social and cultural standards of the child's tribe, including the tribe's family organization and child-rearing practices.
- (3) If the qualified expert witness evidence was presented in writing rather than live testimony, the court finds that all parties waived their right to live testimony by stipulation in writing and that the waiver was knowingly, intelligently and voluntarily made.

#### **Placement Preferences (if the child is placed) (25 U.S.C. 1915; 25 C.F.R. §§23.129, 23.131 & 23.132; Guideline H2-H.5; Welf. & Inst. Code § 361.31; Rule 5.484(b)):**

- (1) The court finds that the child's current placement complies with the placement preferences because:
  - (a) The child is placed with a member of the child's extended family; or
  - (b) An exhaustive search was made for a placement with a member of the child's extended family, and the efforts are documented in detail in the record and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - (c) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe and the efforts are documented in detail in the record and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

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- (d) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority and the efforts are documented in detail in the record and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or
- (e) The child is placed in accordance with the preferences established by the tribe; or

(2) The court finds that there is good cause to depart from the placement preferences based on \_\_\_\_\_.

### **Active Efforts (25 U.S.C. 1912(d); 25 C.F.R. §§23.2, 23.120; Guidelines E1 – E6; Welf. & Inst. Code §361(d), Rule 5.484(c)):**

(1) Upon review of the detention report, the court finds that:

- (a) Affirmative, active, thorough, and timely efforts have been made to prevent the breakup of the Indian family and these efforts have proved unsuccessful;
- (b) These efforts included assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
- (c) To the maximum extent possible, the efforts were provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
- (d) These efforts and case plan have, to the maximum extent possible, been developed and conducted in partnership with the Indian child, the parents, extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

### **Jurisdiction**

#### **Inquiry (25 C.F.R. §23.107; Guideline B.1; Welf. & Inst. Code §224.3; Rule 5.481(a)):**

- (1) The court finds that the agency has asked the child, if old enough, and his or her parents or legal guardians, and the following relatives, \_\_\_\_\_, whether there is information indicating or suggesting the child is an Indian child.
- (2) The court, on the record, has asked the child, if old enough, and his or her parents or legal guardians, all case participants and the following relatives, \_\_\_\_\_, whether there is information indicating or suggesting the child is an Indian child.
- (3) The court instructs all parties to advise the court if they subsequently obtain information indicating or suggesting that the child is an Indian child.

#### **ICWA-020 (if this is the parties' first appearance):**

The mother, biological father, legal guardian, presumed father, alleged father, Indian custodian, other (specify): \_\_\_\_\_ were provided with a *Parental Notification of Indian Status* (form ICWA-020) and ordered to complete form ICWA-020 and to submit it to the court before leaving the courthouse today.

#### **Notice (25 U.S.C. 1912(a); 25 CFR 23.11 & 23.111; Guidelines D1-D7; Welf. & Inst. Code 224.2; rule 5.481(b)):**

- (1) The court finds notice has been provided to the child's parents, and Indian custodian if applicable, and all tribes of which the child may be a member or eligible for membership by sending a *Notice of Involuntary Child Custody Proceedings for an Indian Child (form ICWA-030)* with a copy of the petition by registered or certified mail with return receipt requested, and additional notice has been sent by first-class mail to the tribal chairperson unless the tribe has designated another agent for service. Proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor's status.
- (2) The court finds that notice was received at least 10 days prior to the hearing.
- (3) The court finds either that the identity or location of the parent or Indian custodian or the tribe cannot be determined; notice has been provided to the specified office of the Secretary of the Interior. A copy of the notice sent and the return receipt has been filed with the court.

### **Disposition**

#### **Notice (25 U.S.C. 1912(a); 25 CFR 23.11 & 23.111; Guidelines D1-D7; Welf. & Inst. Code 224.2; rule 5.481(b)):**

- (1) The court finds notice has been provided to the child's parents, and Indian custodian if applicable, and all tribes of which the child may be a member or eligible for membership by sending a *Notice of Involuntary Child Custody Proceedings for an Indian Child (form ICWA-030)* with a copy of the petition by registered or certified mail with return receipt requested, and additional notice has been sent by first-class mail to the tribal chairperson unless the tribe has designated another agent for service. Proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor's status.
- (2) The court finds that notice was received at least 10 days prior to the hearing.
- (3) The court finds either that the identity or location of the parent or Indian custodian or the tribe cannot be determined; notice has been provided to the specified office of the Secretary of the Interior. A copy of the notice sent and the return receipt has been filed with the court.

#### **Detriment (25 U.S.C. 1912(e); 25 C.F.R. §23.121(a),(c) & (d); Guideline G.1; Welf. & Inst. Code §361(c)(6); rule 5.484(a)):**

- (1) The court finds by *clear and convincing* evidence, including the testimony of one or more qualified expert witnesses, and evidence regarding the prevailing social and cultural practices that the continued custody of the child by the parent, legal guardian, or Indian custodian is likely to result in serious emotional or physical harm to the child.

#### **Qualified Expert Witness (25 U.S.C. §1912(e); 25 C.F.R. §§23.121 & 23.122; Guideline G.2; Welf. & Inst. Code §361.7(c); Rule 5.484(a)):**

- (1) The court finds \_\_\_\_\_ (name of witness) qualified to provide expert testimony on the issue of whether continued custody of the child by \_\_\_\_\_ (parent(s), legal guardian or Indian custodian) is likely to result in serious emotional or physical harm to the child;
- (2) The court finds that there was evidence regarding the prevailing social and cultural standards of the child's tribe, including the tribe's family organization and child-rearing practices.
- (3) If the qualified expert witness evidence was presented in writing rather than live testimony, the court finds that all parties waived their right to live testimony by stipulation in writing and that the waiver was knowingly, intelligently and voluntarily made.

#### **Placement Preferences (if the child is placed) (25 U.S.C. 1915; 25 C.F.R. §§23.129, 23.131 & 23.132; Guideline H2-H.5; Welf. & Inst. Code § 361.31; Rule 5.484(b)):**

- (1) The court finds that the child's current placement complies with the placement preferences because:

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- (a) The child is placed with a member of the child's extended family; or
  - (b) An exhaustive search was made for a placement with a member of the child's extended family, and the efforts are documented in detail in the record and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - (c) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe and the efforts are documented in detail in the record and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - (d) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority and the efforts are documented in detail in the record and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or
  - (e) The child is placed in accordance with the preferences established by the tribe; or
- (2) The court finds that there is good cause to depart from the placement preferences based on \_\_\_\_\_.

### **Active Efforts (25 U.S.C. 1912(d); 25 C.F.R. §§23.2, 23.120; Guidelines E1 – E6; Welf. & Inst. Code §361(d), Rule 5.484(c)):**

- (1) Upon review of the detention report, the court finds that:
- (a) Affirmative, active, thorough, and timely efforts have been made to prevent the breakup of the Indian family and these efforts have proved unsuccessful;
  - (b) These efforts included assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
  - (c) To the maximum extent possible, the efforts were provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - (d) These efforts and case plan have, to the maximum extent possible, been developed and conducted in partnership with the Indian child, the parents, extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

### **Prepermanency Review Hearings**

#### **Notice (25 U.S.C. 1912(a); 25 CFR 23.11 & 23.111; Guidelines D1-D7; Welf. & Inst. Code 224.2; rule 5.481(b)):**

- (1) The court finds notice has been provided to the child's parents, and Indian custodian if applicable, and all tribes of which the child may be a member or eligible for membership by sending a *Notice of Involuntary Child Custody Proceedings for an Indian Child (form ICWA-030)* with a copy of the petition by registered or certified mail with return receipt requested, and additional notice has been sent by first-class mail to the tribal chairperson unless the tribe has designated another agent for service. Proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor's status.
- (2) The court finds that notice was received at least 10 days prior to the hearing.
- (3) The court finds either that the identity or location of the parent or Indian custodian or the tribe cannot be determined; notice has been provided to the specified office of the Secretary of the Interior. A copy of the notice sent and the return receipt has been filed with the court.

#### **Placement Preferences (if the child is placed) (25 U.S.C. 1915; 25 C.F.R. §§23.129, 23.131 & 23.132; Guideline H2-H.5; Welf. & Inst. Code § 361.31; Rule 5.484(b)):**

- (1) The court finds that the child's current placement complies with the placement preferences because:
- (a) The child is placed with a member of the child's extended family; or
  - (b) An exhaustive search was made for a placement with a member of the child's extended family, and the efforts are documented in detail in the record and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - (c) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe and the efforts are documented in detail in the record and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - (d) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority and the efforts are documented in detail in the record and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or
  - (e) The child is placed in accordance with the preferences established by the tribe; or
- (2) The court finds that there is good cause to depart from the placement preferences based on \_\_\_\_\_.

#### **Active Efforts (25 U.S.C. 1912(d); 25 C.F.R. §§23.2, 23.120; Guidelines E1 – E6; Welf. & Inst. Code §361(d), Rule 5.484(c)):**

- (1) Upon review of the detention report, the court finds that:
- (a) Affirmative, active, thorough, and timely efforts have been made to prevent the breakup of the Indian family and these efforts have proved unsuccessful;
  - (b) These efforts included assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
  - (c) To the maximum extent possible, the efforts were provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - (d) These efforts and case plan have, to the maximum extent possible, been developed and conducted in partnership with the Indian child, the parents, extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

## Recommended ICWA Findings and Orders

### **Permanency Hearing (Hearing Terminating Reunification Services)**

#### **Inquiry (25 C.F.R. §23.107; Guideline B.1; Welf. & Inst. Code §224.3; Rule 5.481(a)):**

- (1) The court finds that the agency has asked the child, if old enough, and his or her parents or legal guardians, and the following relatives, \_\_\_\_\_, whether there is information indicating or suggesting the child is an Indian child.
- (2) The court, on the record, has asked the child, if old enough, and his or her parents or legal guardians, all case participants and the following relatives, \_\_\_\_\_, whether there is information indicating or suggesting the child is an Indian child.
- (3) The court instructs all parties to advise the court if they subsequently obtain information indicating or suggesting that the child is an Indian child.

#### **Notice (25 U.S.C. 1912(a); 25 CFR 23.11 & 23.111; Guidelines D1-D7; Welf. & Inst. Code 224.2; rule 5.481(b)):**

- (1) The court finds notice has been provided to the child's parents, and Indian custodian if applicable, and all tribes of which the child may be a member or eligible for membership by sending a *Notice of Involuntary Child Custody Proceedings for an Indian Child (form ICWA-030)* with a copy of the petition by registered or certified mail with return receipt requested, and additional notice has been sent by first-class mail to the tribal chairperson unless the tribe has designated another agent for service. Proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor's status.
- (2) The court finds that notice was received at least 10 days prior to the hearing.
- (3) The court finds either that the identity or location of the parent or Indian custodian or the tribe cannot be determined; notice has been provided to the specified office of the Secretary of the Interior. A copy of the notice sent and the return receipt has been filed with the court.

#### **Placement Preferences (if the child is placed) (25 U.S.C. 1915; 25 C.F.R. §§23.129, 23.131 & 23.132; Guideline H2-H.5; Welf. & Inst. Code § 361.31; Rule 5.484(b)):**

- (1) The court finds that the child's current placement complies with the placement preferences because:
  - (a) The child is placed with a member of the child's extended family; or
  - (b) An exhaustive search was made for a placement with a member of the child's extended family, and the efforts are documented in detail in the record and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - (c) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe and the efforts are documented in detail in the record and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - (d) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority and the efforts are documented in detail in the record and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or
  - (e) The child is placed in accordance with the preferences established by the tribe; or
- (2) The court finds that there is good cause to depart from the placement preferences based on \_\_\_\_\_.

#### **Active Efforts (25 U.S.C. 1912(d); 25 C.F.R. §§23.2, 23.120; Guidelines E1 – E6; Welf. & Inst. Code §361(d), Rule 5.484(c)):**

- (1) Upon review of the detention report, the court finds that:
  - (a) Affirmative, active, thorough, and timely efforts have been made to prevent the breakup of the Indian family and these efforts have proved unsuccessful;
  - (b) These efforts included assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
  - (c) To the maximum extent possible, the efforts were provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - (d) These efforts and case plan have, to the maximum extent possible, been developed and conducted in partnership with the Indian child, the parents, extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

### **Hearing Terminating Parental Rights (WIC 366.26 & WIC 727.31)**

#### **Notice (25 U.S.C. 1912(a); 25 CFR 23.11 & 23.111; Guidelines D1-D7; Welf. & Inst. Code 224.2; rule 5.481(b)) for both dependency and delinquency foster care cases:**

- (1) The court finds notice has been provided to the child's parents, and Indian custodian if applicable, and all tribes of which the child may be a member or eligible for membership by sending a *Notice of Involuntary Child Custody Proceedings for an Indian Child (form ICWA-030)* with a copy of the petition by registered or certified mail with return receipt requested, and additional notice has been sent by first-class mail to the tribal chairperson unless the tribe has designated another agent for service. Proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor's status.
- (2) The court finds that notice was received at least 10 days prior to the hearing.
- (3) The court finds either that the identity or location of the parent or Indian custodian or the tribe cannot be determined; notice has been provided to the specified office of the Secretary of the Interior. A copy of the notice sent and the return receipt has been filed with the court.

#### **Detriment (25 U.S.C. 1912(e); 25 C.F.R. §23.121(a),(c) & (d); Guideline G.1; Welf. & Inst. Code §361(c)(6); rule 5.484(a)):**

- (1) The court finds by *clear and convincing* evidence, including the testimony of one or more qualified expert witnesses, and evidence regarding the prevailing social and cultural practices that the continued custody of the child by the parent, legal guardian, or Indian custodian is likely to result in serious emotional or physical harm to the child.

#### **Qualified Expert Witness (25 U.S.C. §1912(e); 25 C.F.R. §§23.121 & 23.122; Guideline G.2; Welf. & Inst. Code §361.7(c); Rule 5.484(a)):**

- (1) The court finds \_\_\_\_\_ (name of witness) qualified to provide expert testimony on the issue of whether continued custody of the child by \_\_\_\_\_ (parent(s), legal guardian or Indian custodian) is likely to result in serious emotional or physical harm to the child;

## Recommended ICWA Findings and Orders

- (2) The court finds that there was evidence regarding the prevailing social and cultural standards of the child's tribe, including the tribe's family organization and child-rearing practices.
- (3) If the qualified expert witness evidence was presented in writing rather than live testimony, the court finds that all parties waived their right to live testimony by stipulation in writing and that the waiver was knowingly, intelligently and voluntarily made.

### **Active Efforts (25 U.S.C. 1912(d); 25 C.F.R. §§23.2, 23.120; Guidelines E1 – E6; Welf. & Inst. Code §361(d), Rule 5.484(c)):**

- (1) Upon review of the detention report, the court finds that:
  - (a) Affirmative, active, thorough, and timely efforts have been made to prevent the breakup of the Indian family and these efforts have proved unsuccessful;
  - (b) These efforts included assisting the parent(s) or Indian custodian through the steps of the case plan and accessing or developing the resources necessary to satisfy the case plan;
  - (c) To the maximum extent possible, the efforts were provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
  - (d) These efforts and case plan have, to the maximum extent possible, been developed and conducted in partnership with the Indian child, the parents, extended family and tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

### **Placement Preferences (25 U.S.C. 1915; 25 C.F.R. §§23.129, 23.131 & 23.132; Guideline H2-H.5; Welf. & Inst. Code § 361.31; Rule 5.484(b)):**

- (1) The court finds that the child's current placement complies with the placement preferences because, in the case of an adoptive or pre-adoptive placement:
  - (a) The child is placed with a member of the child's extended family; or
  - (b) An exhaustive search was made for a placement with a member of the child's extended family, and those efforts are documented in detail in the record and the child is placed with other members of the child's tribe; or
  - (c) An exhaustive search was made for a placement with a member of the child's extended family or other member of the child's tribe, and those efforts are documented in detail in the record and the child is placed with another Indian family; or
  - (d) The child is placed in accordance with the preferences established by the tribe; or
  - (e) The court finds that there is good cause to depart from the placement preferences based on \_\_\_\_\_.
- (2) In the case of a foster care placement:
  - (a) The child is placed with a member of the child's extended family; or
  - (b) An exhaustive search was made for a placement with a member of the child's extended family, and the efforts are documented in detail in the record and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - (c) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe and the efforts are documented in detail in the record and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - (d) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority and the efforts are documented in detail in the record and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or
  - (e) The child is placed in accordance with the preferences established by the tribe; or
  - (f) The court finds that there is good cause to depart from the placement preferences based on \_\_\_\_\_.

### **Postpermanency Reviews (when the child is in planned permanent living arrangement)**

#### **Notice (25 U.S.C. 1912(a); 25 CFR 23.11 & 23.111; Guidelines D1-D7; Welf. & Inst. Code 224.2; rule 5.481(b)) for both dependency and delinquency foster care cases:**

- (1) The court finds notice has been provided to the child's parents, and Indian custodian if applicable, and all tribes of which the child may be a member or eligible for membership by sending a *Notice of Involuntary Child Custody Proceedings for an Indian Child (form ICWA-030)* with a copy of the petition by registered or certified mail with return receipt requested, and additional notice has been sent by first-class mail to the tribal chairperson unless the tribe has designated another agent for service. Proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor's status.
- (2) The court finds that notice was received at least 10 days prior to the hearing.
- (3) The court finds either that the identity or location of the parent or Indian custodian or the tribe cannot be determined; notice has been provided to the specified office of the Secretary of the Interior. A copy of the notice sent and the return receipt has been filed with the court.

### **Placement Preferences (25 U.S.C. 1915; 25 C.F.R. §§23.129, 23.131 & 23.132; Guideline H2-H.5; Welf. & Inst. Code § 361.31; Rule 5.484(b)):**

- (1) The court finds that the child's current placement complies with the placement preferences because, in the case of an adoptive or pre-adoptive placement:
  - (a) The child is placed with a member of the child's extended family; or
  - (b) An exhaustive search was made for a placement with a member of the child's extended family, and those efforts are documented in detail in the record and the child is placed with other members of the child's tribe; or
  - (c) An exhaustive search was made for a placement with a member of the child's extended family or other member of the child's tribe, and those efforts are documented in detail in the record and the child is placed with another Indian family; or
  - (d) The child is placed in accordance with the preferences established by the tribe; or
  - (e) The court finds that there is good cause to depart from the placement preferences based on \_\_\_\_\_.

## Recommended ICWA Findings and Orders

- (2) In the case of a foster care placement:
- (a) The child is placed with a member of the child's extended family; or
  - (b) An exhaustive search was made for a placement with a member of the child's extended family, and the efforts are documented in detail in the record and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
  - (c) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe and the efforts are documented in detail in the record and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - (d) An exhaustive search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority and the efforts are documented in detail in the record and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or
  - (e) The child is placed in accordance with the preferences established by the tribe; or
  - (f) The court finds that there is good cause to depart from the placement preferences based on \_\_\_\_\_.

### **Finalization of Adoption & Adoption Order**

**Notice (25 U.S.C. 1912(a); 25 CFR 23.11 & 23.111; Guidelines D1-D7; Welf. & Inst. Code 224.2; rule 5.481(b)) for both dependency and delinquency foster care cases:**

- (1) The court finds notice has been provided to the child's parents, and Indian custodian if applicable, and all tribes of which the child may be a member or eligible for membership by sending a *Notice of Involuntary Child Custody Proceedings for an Indian Child (form ICWA-030)* with a copy of the petition by registered or certified mail with return receipt requested, and additional notice has been sent by first-class mail to the tribal chairperson unless the tribe has designated another agent for service. Proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor's status.
- (2) The court finds that notice was received at least 10 days prior to the hearing.
- (3) The court finds either that the identity or location of the parent or Indian custodian or the tribe cannot be determined; notice has been provided to the specified office of the Secretary of the Interior. A copy of the notice sent and the return receipt has been filed with the court.

**Reporting Requirements (25 U.S.C. 1951; 25 C.F.R. §23.140; Guideline J.2; Family Code §9208):**

- (1) A copy of this order shall be sent to the Secretary of the Interior including:
  - (a) The names and tribal affiliation of the child,
  - (b) The names and addresses of the biological parents,
  - (c) The names and addresses of the adoptive parents,
  - (d) The identity of any agency having files or information relating to such adoptive placement, and
  - (e) Any affidavit of the biological parents that their identity remain confidential if applicable.