



Juvenile Delinquency Courts

Recommended Legal Findings and Orders for Cases Involving the Indian Child Welfare Act (ICWA)*

I. Inquiry (at every hearing when the child is in foster care or at risk of entering foster care) (Welf. & Inst. Code, § 224.3; Cal. Rules of Court, rule 5.481(a))

- A. The court finds that the agency and the court have inquired whether the child is or may be an Indian child. If any of the following are true, then the additional requirements B through F must also be complied with:
- The proceedings are based on conduct that would not be a crime if committed by an adult;
 - The court is considering or has set a hearing to terminate parental rights; or
 - The court has made a specific finding that the foster care placement is based entirely upon conditions within the child's home.
- B. The court finds that the ICWA-010(A) attachment has been completed and is in the court file; and
- C. The court finds that both parents and the Indian Custodian (if any) have completed the ICWA-020 and those documents are in the court file; and
- D. The court finds, after the agency has inquired and the court has inquired,
1. that there is reason to believe the child may be an Indian child; or
 2. that there is no reason to believe the child may be an Indian child; and
- E. If there is reason to know that the child is an Indian child, the court finds that the agency has interviewed the parents, Indian custodian, and extended family and has contacted the BIA to obtain information contained in Welfare and Institutions Code section 224.2(a)(5).
- F. If there is reason to believe that the child is an Indian child:
1. The court finds that the agency has inquired whether the child may be resident or domiciled on a reserve.
 2. The court finds that the agency has inquired whether the child is the ward of a tribal court.

II. Application (ICWA § 1903(1) & (4); Welf. & Inst. Code, § 224.1(a) & (c); Cal. Rules of Court, rule 5.480)

At every hearing when the child is in foster care or at risk of entering foster care and any one of the following applies:

- **the proceeding is based on conduct that would not be a crime if committed by an adult;**
 - **the court is considering or has set a hearing to terminate parental rights; or**
 - **the court has made a specific finding that the foster care placement is based entirely upon conditions within the child's home.**
- A. The child may be an Indian child, and therefore the act may apply.
- B. The child is an Indian child, because the court has proof of tribal membership or the tribal determination received by the court indicates that the child is a member or is eligible for membership.
- C. The child is not an Indian child, because the tribal determination received by the court indicates that the child is not a member and is not eligible for membership.
- D. The court will proceed as if the act does not apply, because proper notice was sent to the tribe(s) with which the child is affiliated and/or to the Bureau of Indian Affairs (BIA), and 60 days have elapsed with no determinative response from the tribe(s) and/or BIA. However:
1. If the court receives information on the child's Indian heritage, it will send the information to the tribe(s) and/or BIA.
 2. If the court later receives evidence of the applicability of the act, then the court will apply the act.

*All citations in this chart are to the Indian Child Welfare Act (ICWA) (25 U.S.C. 1901 et seq.), California Welfare and Institutions Code (WIC), and California Rules of Court.

III. Tribal Representative/Intervention (at every hearing when ICWA applies) (ICWA § 1911(c); Welf. & Inst. Code, § 224.2(5)(G)(i); Cal. Rules of Court, rule 5.482(e))

- A. The (*name of tribe*) _____ Tribe has acknowledged that the child is a member of or is eligible for membership in the tribe and will monitor the case.
- B. The (*name of tribe*) _____ Tribe has designated (*name of representative*) _____ to be the tribe's representative.
- C. The *tribe's representative* is entitled to the rights listed in *Judicial Council* form ICWA-040, *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child*.
- D. The (*name of tribe*) _____ Tribe has intervened in this case and will be treated as a party to the proceedings.

IV. Continuances (all hearings when ICWA applies except detention, the jurisdiction hearing if it would conflict with speedy trial considerations, and the disposition in if there is good cause to deny the continuance) (ICWA § 1912(a); Welf. & Inst. Code, § 224.2(d); Cal. Rules of Court, rule 5.482(a))

Upon request, this court grants the parent, Indian custodian, or tribe a continuance of up to 20 days to prepare for the hearing.

V. Appointment of Counsel (at every hearing when ICWA applies) (ICWA § 1912(b); Welf. & Inst. Code, § 317(a)(2))

- A. The Court finds that the parent(s) and/or Indian custodian appear to be indigent; and
- B. The Court hereby appoints counsel to represent the parent(s) and/or Indian custodian; or
- C. The Court finds that the parent(s) and/or Indian custodian do not appear to be indigent.

VI. Tribal Consultation (Dispositional Hearing when ICWA applies) (Cal. Rules of Court Rules 5.690(c) & 5.785(c))

- A. The Court finds that in developing the case plan the agency has:
 - 1. Solicited and integrated into the case plan the input of the child's identified Indian tribe; **or**
 - 2. Not solicited and integrated into the case plan input from the child's identified Indian tribe; **and**
 - a) the Court orders the agency to solicit and integrate into the case plan input from the child's identified Indian tribe, **or**
 - b) the Court finds that the child's identified Indian tribe was unable, unavailable or unwilling to participate in development of the case plan.

VII. Notice (at every hearing when ICWA applies) (ICWA § 1912(a); Welf. & Inst. Code, § 224.2; Cal. Rules of Court, rule 5.481(b))

- A. The court finds that notice has been provided by certified mail with return receipt requested to all tribes of which the child may be a member or eligible for membership and to the BIA. Notice to the tribe(s) was addressed to the tribal chairperson unless the tribe has designated another agent for service of ICWA notice.
- B. The court finds that 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 Indian status.
- C. The court finds *either* that the identity or location of the parent or Indian custodian or tribe cannot be determined *or* that the child has Indian ancestry but is not a member of an identified tribe or eligible for membership in an identified tribe; notice has been provided to the specified office of the Secretary of the Interior. A copy of the notice sent and the return receipt have been filed with the court.
- D. The court finds that notice has been provided by sending Judicial Council form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*., with a copy of the petition, by registered or certified mail with return receipt requested, and additional notice by first-class mail, to the parent, tribe, Indian custodian, and Bureau of Indian Affairs (BIA).

VIII. Detriment and Standard of Proof (at disposition when ICWA applies and all termination of parental rights hearings) (ICWA § 1912(e) & (f); Welf. & Inst. Code, §§ 361(a)(6), 361.7, 366.26(c)(2)(B); Cal. Rules of Court, rules 5.484(a), 5.484(a))

- A. For a foster-care placement, the court finds by *clear and convincing* evidence, including the testimony of one or more qualified expert witnesses, that the continued custody of the child by the parent, legal guardian, or Indian custodian is likely to result in serious emotional or physical danger to the child.
- B. For termination of parental rights, the court finds by evidence *beyond a reasonable doubt*, including the testimony of one or more qualified expert witnesses, 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.

IX. Active Efforts (at every hearing when ICWA applies where the child is out of the custody of his or her parents, Indian custodians, or

legal guardians and is placed in foster care [stranger or relative or group home]) (ICWA § 1912(d); Welf. & Inst. Code, §§ 361(d), 361.7; Cal. Rules of Court, rules 5.484(c), 5.485(a)(1))

- A. If a tribe has indicated that the child would be eligible for enrollment if certain steps are followed, the court finds that the agency has made active efforts by taking steps to secure tribal membership. (Cal. Rules of Court, rules 5.482(c), 5.484(c).)
- B. The court finds, after reviewing the report, that active efforts have been made to provide culturally appropriate services and rehabilitative programs designed to prevent the breakup of the Indian family.
- C. The court finds that the agency has incorporated culturally appropriate services into the case plan for the child and the parent(s) or Indian custodian.
- D. The court finds that the agency has consulted with the child's tribe in development of the case plan for the child and the parent(s) or Indian custodian.

X. Placement Preferences (at every hearing when ICWA applies where the child is out of the custody of his or her parents, Indian custodians, or legal guardians and is placed in foster care [stranger or relative or group home]) (ICWA § 1915; Welf. & Inst. Code, § 361.31; Cal. Rules of Court, rule 5.484(b))

- A. The court finds that
 - the agency adhered to the placement preferences under the act when placing the child;
 - the child is detained in a placement that adheres to the placement preferences under the act; and
 - the agency has consulted with the child's tribe and Indian organizations concerning the appropriate placement of the child.
- B. The court finds good cause to deviate from the placement preferences under the act on the grounds that _____.

XI. Jurisdiction and Transfer (at any hearing when ICWA applies) (ICWA § 1911; Welf. & Inst. Code, § 305.5; Cal. Rules of Court, rule 5.483)

- A. The court finds that the child resides or is domiciled on the reservation of the _____ Tribe or that the child is the ward of the _____ Tribe, and, accordingly, the _____ Tribe has exclusive jurisdiction.
- B. The court finds that this juvenile court and the court of the child's tribe have concurrent jurisdiction.
- C. The (*specify tribe or parent or Indian custodian*) _____ has petitioned this court to transfer the proceedings to the tribal court, and finding no good cause not to transfer, this court transfers the case to the tribal court of (*name of tribe*) _____ Tribe.
- D. After holding an evidentiary hearing, this court finds that the (*specify tribe or parent or Indian custodian*) _____ has petitioned this court to transfer the proceedings to the tribal court, and the court finds that the following reason is good cause not to transfer the case to the tribal court:
 - 1. The child's parent objects to the transfer;
 - 2. The child's tribe does not have a tribal court or any other administrative body as defined in section 1903 of the act; or
 - 3. The tribal court of the child's tribe declined the transfer.
- E. After holding an evidentiary hearing, this court finds that the (*specify tribe or parent or Indian custodian*) _____ has petitioned this court to transfer the proceedings to the tribal court, and the court finds that the following circumstances in the case constitute in the court's discretion good cause not to transfer the case to the tribal court:
 - 1. The evidence necessary to decide the case cannot be presented in tribal court without undue hardship to the parties;
 - 2. This proceeding is at an advanced stage, and petitioner did not make the request within a reasonable time after receiving notice of this proceeding;
 - 3. The child is over 12 and objects to the transfer; or
 - 4. The child is over 5 and has had little or no contact with his or her tribe or members of the child's tribe, and the child's parents are not available.