

- ✓ Provide your client with any additional culturally appropriate services. You may want to use this directory: www.courts.ca.gov/5807.htm;
- ✓ If your client agrees, provide information on your agency's services or any additional helpful information to the child's social worker, probation officer, and/or tribal representative;
- ✓ Offer to help create the case plan;
- ✓ Give updates to the court;
- ✓ Offer to go with your client to court as extra support. You may not be able to enter the courtroom, but having support while waiting for the hearing to begin and afterwards can be beneficial.

Will my client's tribe know their family is involved with the legal system?

Yes, if there is reason for a state or federal court to know a family is American Indian/Alaskan Native, then any identified tribe, parent, guardian, Indian custodian, and the Bureau of Indian Affairs (BIA) must be notified by the:

- Social worker in a dependency case;
- Probation officer in a delinquency case;
- Parent in a family court case;
- Court clerk in a probate guardianship case.

What if my client does not want their tribe to know about their court case?

The tribe has the right to intervene in an ICWA case whether the parent agrees or not. The parents cannot waive the rights of the tribe.

Where can I find more information?

The Tribal/State Programs Unit of the Judicial Council's Center for Families, Children & the Courts, assists the state judicial branch with the development of policies, positions, and programs to promote the highest quality of justice and service for California's Native American communities in all case types. The unit also implements tribal-state programs that improve the administration of justice in all proceedings in which the authority to exercise jurisdiction by the state judicial branch and the tribal justice systems overlaps. To learn more about the Tribal/State Programs Unit or for assistance, call Jennifer Walter at 415-865-7687 or visit www.courts.ca.gov/programs-tribal.htm.

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<http://www.courts.ca.gov/3067.htm>



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**S.T.E.P.S. to Justice-
 Indian Child
 Welfare for
 Service Providers**

**State/Tribal Education, Partnerships,
 and Services—Information for
 Service Providers Serving American
 Indian/Alaskan Native Children &
 Families**

June 2015



**JUDICIAL COUNCIL
 OF CALIFORNIA**
 OPERATIONS AND PROGRAMS DIVISION

What is the Indian Child Welfare Act?

The Indian Child Welfare Act (ICWA) is a federal law that seeks to keep Native American children within their cultures and communities.

Congress passed ICWA in 1978 in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" (25 U.S.C. § 1902). ICWA sets minimum federal requirements that apply to state child custody proceedings involving an Indian child who is a member of, or eligible for, membership in a federally recognized tribe.

What are your client's rights as an American Indian/Alaskan Native?

If either parent has ANY American Indian or Alaskan Native ancestry, the child and parents are guaranteed certain rights under ICWA and California law, including:

- A right to assistance if the parent or child needs help with tribal enrollment;
- Entitlement to agency services, if available in your area, for American Indian/Alaskan Native families;
- Specific placement practices that the social worker or probation officer must follow to keep the child connected to his or her tribal community or communities; and
- Additional assistance if the tribe acts to intervene on behalf of the family or child.

Which Cases?

Family Court is where parents who separate go to ask a judge to make orders regarding child custody, visitation, parenting time, child support etc. ICWA applies in these matters if they touch on the custody or care of an Indian child may be granted to someone other than the child's parents.

Probate Court deals with the estates of people who have died, guardianships and conservatorships of people in need of protection. ICWA applies to probate guardianship cases concerning Indian children.

Juvenile Court—Dependency

Dependency cases arise when there are concerns about the abuse or neglect of children. The court can order that:

- The parent and the child receive the services the family needs;
- The child be removed from their parents' care and live with relatives, foster parents or group homes;
- Parental rights be terminated;
- Tribal Customary Adoption (TCA)-At the option of the child's tribe, the child may be eligible for adoption by and through the laws, traditions and customs of the child's tribe without requiring termination of the parental rights of the child's biological parents.

Juvenile Court—Delinquency

If a child breaks the law and is charged, the case will probably be heard in a delinquency court. (Depending on the child's age and history and the seriousness of the crime, a child may be tried as an adult in criminal court). ICWA's requirements other than inquiry apply only to delinquency proceedings where the child is in

foster care or at risk of entering foster care AND one of the following:

- The proceeding arises out of conduct which would not be criminal if committed by an adult;
- The court is setting or considering setting a hearing to terminate parental rights; or
- The court makes a specific finding that the foster care placement is based entirely on conditions within the child's home.

The court can order that the child:

- Live with the parent under court supervision;
- Be placed on probation and sent to live in a relative's home, a foster home, group home, or an institution;
- Be confined by the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ)* youth facility or, if tried and convicted as an adult, a state prison.

How can a service provider help a client that is at risk or currently involved in the child welfare system?

- ✓ Help your client with identifying family members and Indian ancestry. You may want to use this resource: http://www.courts.ca.gov/documents/ICWA-Familyfillable_tree.pdf;
- ✓ Ask your client if their child is placed with someone else and if that caregiver is an "Indian custodian", which is an Indian person who is caring for an Indian child. ICWA gives the Indian custodian the same rights as a parent;