

- ◆ A member of the child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices.
- ◆ An expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child-rearing practices of the Indian child's tribe.

How is a QEW located?

- ◆ The removing party (i.e., agency or guardian) should ask the tribe first if the tribe has a QEW. If the tribe doesn't have a QEW to recommend, your county may already work with individuals who can serve as a QEW.
- ◆ Contact the Bureau of Indian Affairs at 202-208-5116 or www.bia.gov/bia.
- ◆ View the California ICWA Expert Witness List at www.courts.ca.gov/8105.htm.

Will the child's tribe know that the child's family is involved with the legal system?

Yes. If there is reason for a court to know that a family is American Indian / Alaska Native, then the tribe, parent, guardian, Indian custodian, and Bureau of Indian Affairs must be notified by the:

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

What if the family doesn't want the tribe to know about the court case?

The tribe has the right to intervene in an ICWA case. The parents cannot waive the rights of the tribe.

FOR MORE INFORMATION

This brochure was created in collaboration with QEW professionals & the Tribal/State Programs Unit of the Judicial Council of California's Center for Families, Children & the Courts.

The Tribal/State Programs Unit provides support to local courts on tribal issues and assists with the development of policies, positions, and programs to ensure the highest quality of justice and service for California's Native American communities. The unit provides educational and technical assistance to those communities in relation to the Indian Child Welfare Act.

To learn more about the Tribal/State Programs Unit or for assistance, call 415-865-7739 or visit www.courts.ca.gov/programs-tribal.htm.

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THE INDIAN CHILD WELFARE ACT & QUALIFIED EXPERT WITNESSES

FAMILIES & CAREGIVERS

Important Information for
American Indian / Alaska Native
Families and Caregivers in California

January 2024



Judicial Council of California

What is the Indian Child Welfare Act?

The Indian Child Welfare Act (ICWA) is a federal law created to keep American Indian / Alaska Native (AI/AN) children connected to their cultures and communities. Congress passed ICWA in 1978 to protect the best interests of Indian children, to keep AI/AN families together, 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 Indian children. California has also passed laws that set higher standards and additional requirements. For more information about ICWA, visit www.courts.ca.gov/3067.htm.

The law defines an Indian child as:

- ◆ Under 18 and unmarried; *or*
- ◆ A nonminor dependent; *and*
- ◆ A member of an Indian tribe; *or*
- ◆ Eligible for membership and a biological child of a member of a federally recognized tribe.

What are the four types of ICWA court cases?

Family court

ICWA applies if custody or care of an Indian child may be given to someone other than the child’s parents or if parental rights may be terminated.

Probate court

ICWA applies to probate guardianship cases involving Indian children.

Juvenile Court—Dependency

When there are concerns about abuse or neglect of an Indian child, the court may order that:

- ◆ Parents or Indian custodians and the child receive culturally appropriate services;
- ◆ The child be removed from the parents’ care and live in relative or foster care during the reunification process; or
- ◆ Parental rights be terminated or that the child is eligible for tribal customary adoption per the laws, traditions, and customs of the tribe without termination of parental rights.

Juvenile Court—Delinquency

If a child is charged with breaking the law, the case may be heard in a delinquency court. ICWA’s requirements (other than inquiry) apply to delinquency proceedings only when the child is in foster care or at risk of entering foster care. Additional specific requirements are available at www.courts.ca.gov/documents/ICWA-Delinquency-factsheet.pdf.

What are the rights of ICWA-eligible children and families?

If the case is ICWA eligible, under the Foster Youth Bill of Rights the child and parents have certain rights, including:

- ◆ Assistance with tribal enrollment for the child;
- ◆ Entitlement to services created for AI/AN families (if available in the family’s area);
- ◆ Placement preferences to keep the child connected to the child’s tribal community; and
- ◆ Additional assistance if the tribe intervenes on behalf of the family or child.

For more information on the Foster Youth Bill of Rights, please visit fosteryouthhelp.ca.gov/wp-content/uploads/sites/276/2020/10/Foster-Youth-Bill-of-Rights-WIC-16001.9_ADAComplaint.pdf.

Are there any additional requirements in ICWA cases?

Yes, a qualified expert witness (QEW) is required at certain times in an ICWA case.

What is the QEW’s role?

By law, the QEW must gather information to provide evidence to the court:

1. Before a state court can make an order for involuntary foster care placement or before a state court can involuntarily terminate parental rights of the parent of an Indian child;¹ and

¹ Welf. & Inst. Code, § 224.6(b); Fam. Code, § 177(a); Prob. Code, § 1459.5(b).

2. In California, if a party is seeking to deviate from the ICWA placement preferences based on the needs of the child.²

What evidence will the QEW provide to the court?

The evidence will include the following:

- ◆ Proof of harm to the child. Identify safety risks or harm in the home of the parent or Indian custodian, or determine whether a different placement is needed.
- ◆ Tribal cultural standards. Determine whether the child’s current home and resources are within the child’s tribe’s traditional ways of raising a child. The QEW may also testify about:
 - ◇ Active efforts;
 - ◇ The child’s placement; and
 - ◇ Findings involving laws or customs of the child’s tribe.

How will the QEW work with your family?

The QEW will provide the following:

- ◆ Document review. The QEW reviews case files, including court reports, case notes, and other documentation.
- ◆ Consultation.
 - ◇ The QEW is required to communicate with all parties to the case and document the information received.
 - ◇ The QEW can communicate via phone, via video, or in person.
- ◆ Evidence. The QEW may give written testimony, called a declaration, or live testimony in court.

Who can be a QEW?

- ◆ A person designated by the tribe as being qualified to testify to the prevailing social and cultural standards of the child’s tribe.

² 25 U.S.C. § 1912(e)–(f); Welf. & Inst. Code, § 224.6.