

JUDICIAL COUNCIL OF CALIFORNIA

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

ICWA Information Sheet - ICWA Inquiry (DEPENDENCY)¹

1. Initial Inquiry

In every dependency case, the Court and child welfare agency share an affirmative and continuing duty to inquire whether the child is or may be an Indian child. (WIC 224.2(a)). ICWA inquiry can be thought of as having two stages: 1) Initial inquiry which is done in each and every case in which a child welfare agency or probation department makes first contact with a child and family (WIC 224.2(a), and 2) Further inquiry which is required in those cases in which initial inquiry gives “reason to believe” that an Indian child may be involved (WIC 224.2(e)).

Initial inquiry must be done by the agency at initial contact, including but not limited to, asking a person reporting child or abuse or neglect whether they have any information that the child may be an Indian child. (WIC 224.2(a)) Initial inquiry includes asking (1) the child (if old enough), (2) the parents, (3) guardians, (4) extended family members, (5) others who have an interest in the child and (6) where applicable the party reporting child abuse or neglect, whether the child is or may be an Indian child and whether the residence or domicile of the child, the parents, or Indian custodian is on a reservation or in an Alaska Native Village. (WIC 224.2; CRC 5.481(a)(1)) and requiring each party to state on the record at the first hearing whether the participant knows or has reason to know that the child is an Indian child and instructing them to inform the court if they subsequently receive information that provides reason to know the child is an Indian child. (25 CFR §23.2; WIC 224.2(c); CRC 5.481(a)(2))

Note – federal regulations and guidelines which came into effect in December of 2016, require ICWA inquiry at the start of each stage or new “proceeding” in an ICWA case. (see definition of “proceeding” at 25 CFR §23.2 and requirements for inquiry at 25 CFR §23.107 and Guideline B.1). So as the case moves from “foster care placement” (i.e., reunification) to “termination of parental rights” (ie. permanency) and “pre-adoptive” and “adoptive placement”, be sure to revisit this issue.

¹ Updated with current references as of January 1, 2022.

2. Document Initial Inquiry in Case File

The initial ICWA inquiry must be documented in the juvenile court case file in a number of ways: (1) the appropriate box should be checked on the petition; (2) a completed judicial council form ICWA-010(A) *Indian Child Inquiry Attachment* should either be attached to the petition, or if not available when the petition is filed, completed and submitted to the court separately; (3) judicial council form ICWA-020 *Parental Notification of Indian Status* for each of the child's parents, completed and signed by the parents should be in the court file. If one or both parents are not available to complete and sign the ICWA-020, the file should clearly document this. If one parent is not available, the other parent and other available family members should be asked about the missing parent's possible Indian ancestry and this noted in the court file.

Note: the duty of ICWA inquiry is affirmative and continuing. This means that whatever stage in the case a parent or family member becomes available they should be asked about Indian status. Whenever, and however information suggesting that the child is or may be an Indian child there is an obligation to comply with ICWA requirements.

3. Reason to Believe

According to WIC 224.2(e), information "suggesting" that either parent or the child is a member or may be eligible for membership in an Indian tribe is sufficient to give you "reason to believe" the child is an Indian child and trigger the duty of "further Inquiry. This information can come from any source. It can come as the result of the initial inquiry conducted by the agency and the court, or it can come from a relative, other individual, caretaker or agency interested in the child.

When there is "reason to believe", the agency must conduct "further inquiry". Further inquiry requires at a minimum interviewing (1) the parents (2) extended family members (3) any other person that reasonably can be expected to have information regarding the child's membership status or eligibility (i.e., extended family) and contacting (1) CDSS, (2) Bureau of Indian Affairs and (3) tribe(s) (WIC§ 224.3, subd. (c); see also Cal. Rules of Court, rule 5.481(a)(4).) The purpose and goal of further inquiry is to obtain the information required by WIC 224.2 (a) and set out in the ICWA-030 form.

Caution – per WIC 224.2 the duty of further inquiry falls to the court or social worker. The court can order the parties to cooperate with ICWA inquiry but cannot shift the duty to complete ICWA inquiry to another party other than the social worker.²

Very little information is required in order to trigger the obligation to do further inquiry.

² See *In re. A.G.* (2012) 204 Cal.App.4th 1390 and *Guardianship of the Person of D.W.* (2013) 221 Cal.App.4th 242.

Tip: If parents state they have or may have Indian ancestry, it is fine to provide them with some sort of questionnaire to complete as part of “further inquiry”. However, the duty of further inquiry belongs to the court and the agency and cannot be entirely shifted to the parents. If extended family members and other sources of information are available, parent’s failure to return a questionnaire or provide information does not excuse failure to obtain information from other available sources. (*In re A.G.* (2012) 204 Cal.App.4th 1390)

4. Further Inquiry

The goal of ICWA “further inquiry” is to obtain all of the available information necessary for a tribe to determine whether or not a particular child is affiliated with the Tribe. Essentially this is the information that would be required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child* (<http://www.courts.ca.gov/documents/icwa030.pdf>)

At a minimum, “further inquiry” must include interviewing the child’s parents, Indian custodian and any available extended family members; contacting the Bureau of Indian Affairs (BIA)³ and the California Department of Social Services (CDSS)⁴ for assistance in identifying the names and contact information of the tribes in which the child may be a member and any other person that may be reasonably expected to have information regarding the child’s membership status or eligibility, and finally contacting the tribe or tribes that the child may be affiliated with. Contact with the tribe shall at a minimum include telephone, facsimile, or email contact to each tribe’s designated agent for receipt of ICWA notices.⁵ Contact with a tribe shall also include sharing information that the tribe asks for in order to make its determination of the child’s status. (WIC 224.2(e)). In addition to following the requirements of WIC 224.2(e) in contacting tribes, you should also use common sense. If you are unable to contact the tribe using the information in the BIA list, try googling the tribe to find their website which may have updated contact information. Tribes may also have contact information on facebook.

Think of further inquiry as three distinct stages. The first stage is information gathering done through the interviewing of the parents, available extended family, and others. Only after you have all available information should you reach out to the BIA and CDSS if you need help identifying tribes or getting contact information for tribes. The final step is reaching out to the tribes the child and family may be affiliated with based on the information that you have gathered. Formal ICWA notice to the tribe(s) on form ICWA-030 by registered or certified mail is not required as part of further inquiry, but the same care and attention should be put into

³ Contact information for the Pacific Regional Office of the BIA in Sacramento is available at: <https://www.bia.gov/regional-offices/pacific/contact-us>

⁴ The California Department of Social Services has an Office of Tribal Affairs: <https://cdss.ca.gov/inforesources/tribal-affairs>

⁵ The list of designated ICWA Agents maintained by the Bureau of Indian Affairs is available at: <https://www.bia.gov/bia/ois/dhs/icwa/agents-listing/>

ensuring that the tribe(s) receive all of the information that they need to make a determination about the child's status.

5. Document Inquiry and Further Inquiry in the Court file

The court should ensure that evidence of initial inquiry and where there is "reason to believe", further inquiry is well documented in the court file. This evidence can be part of the court report or can be a separate filing. The court must review the sufficiency of the agencies' efforts.

6. Reason to know

There is "reason to know" the child is an Indian child whenever anyone informs the court or agency that the child is an Indian child, the residence or domicile of the child or parents or Indian custodian is on a reservation or Alaska Native village, anyone informs the court or agency that it has information indicating the child is an Indian child, the child is or has been under the jurisdiction of a tribal court, or the child or parent(s) possess an identification card indicating membership or citizenship in an Indian tribe. (25 C.F.R. §23.107(c); WIC 224.2(d))

If there is reason to know, the court and agency must provide formal notice to the tribe(s) on the ICWA-030 form by registered or certified mail, confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership), and Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child". (25 C.F.R. §23.107(b); WIC 224.2(f) & (g))

7. Judicial Findings

Once ICWA has been raised as a possible issue by a parent or other interest person saying the child may have Indian ancestry, it is important for the Court to ensure that the matter is properly

Based on the results of further inquiry the judicial officer may consider doing any of the following:

- a)** Decide that no notice is necessary and that ICWA does not apply.

This situation should be rare and only appropriate if nothing emerged during further inquiry to support tribal affiliation and no specific tribal information could be identified. If you believe this is the appropriate option best practice dictates the following:

- Tell all parties that based on the available information the claim of Indian ancestry is too vague and speculative. There is no specific tribal information. Accordingly based on this information ICWA notice is not required.
- Confirm with parties that they have no further information and there are no other individuals who could be contacted for information.
- Order all parties to advise the court if they subsequently obtain further information concerning the child's Indian heritage or status.
- Order that without further information, there is no need for ICWA notice and ICWA does not apply.

Note – because the duty of inquiry is affirmative and continuing, if more information emerges at a later point, the ICWA issue may have to be revisited.

b) Decide that ICWA notice is required and that ICWA may apply.

This will be the usual outcome where a claim of Indian ancestry is made on initial inquiry. Notice itself is discussed in a separate information sheet. However, inquiry and notice are closely linked. As a final piece of “inquiry” the Court should ensure that when notice is sent, all parties, particularly parents and their counsel (per *In re S.B.* 174 Cal.App.4th 808, 94 Cal. Rptr.3d 645 appointed counsel should be able to review ICWA notice and advise the court of any defects) are asked to confirm that the contents of the notice are accurate and complete and that they have no further information to add.

Tip – in these cases you must apply all of the ICWA's procedural, evidentiary, and substantive provisions until the ICWA issues are resolved.

c) Decide that ICWA notice is required and that ICWA does apply.

Sometimes you will know that ICWA applies even before notice has been sent and a response received from a tribe. Such cases include situations where the child's tribal enrollment card⁶ is produced or the court has previously found ICWA applicable to the child, or whereas a result of the agency or other parties' interactions with the tribe the child's status has been verified. In these cases, notice must be sent to the child's tribe.

Note – federal regulations require that when you have reason to know that an Indian child is involved, you must treat the child as an Indian child and apply ICWA unless and until you are able to determine on the record that the child does not meet the statutory definition of Indian child. (25 CFR §23.107(b)(2)).

⁶ Note that not all tribes issue such cards, but where they do it is *prima facie* proof of tribal membership.

Indian Child Welfare Act Inquiry and Notice requirements under federal & California state law¹

Federal Regulations at 25 C.F.R. Part 23

§23.105 How do I contact a Tribe under the regulations in this subpart?

To contact a Tribe to provide notice or obtain information or verification under the regulations in this subpart, you should direct the notice or inquiry as follows:

- (a) Many Tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of Tribes' designated Tribal agents for service of ICWA notice in the Federal Register each year and makes the list available on its Web site at www.bia.gov.
- (b) For a Tribe without a designated Tribal agent for service of ICWA notice, contact the Tribe to be directed to the appropriate office or individual.
- (c) If you do not have accurate contact information for a Tribe, or the Tribe contacted fails to respond to written inquiries, you should seek assistance in contacting the Indian Tribe from the BIA local or regional office or the BIA's Central Office in Washington, DC (see www.bia.gov).

§23.107 How should a State court determine if there is reason to know the child is an Indian child?

- (a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.
- (b) If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an "Indian child," the court must:
 - (1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and
 - (2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child" in this part.
- (c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

¹ Current as of December 2020.

- (1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
 - (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
 - (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;
 - (4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;
 - (5) The court is informed that the child is or has been a ward of a Tribal court; or
 - (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.
- (d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an "Indian child." A Tribe receiving information related to this inquiry must keep documents and information confidential.

§23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?

- (a) The Indian Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) determines whether the child is a member of the Tribe, or whether the child is eligible for membership in the Tribe and a biological parent of the child is a member of the Tribe, except as otherwise provided by Federal or Tribal law.
- (b) The determination by a Tribe of whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member, is solely within the jurisdiction and authority of the Tribe, except as otherwise provided by Federal or Tribal law. The State court may not substitute its own determination regarding a child's membership in a Tribe, a child's eligibility for membership in a Tribe, or a parent's membership in a Tribe.
- (c) The State court may rely on facts or documentation indicating a Tribal determination of membership or eligibility for membership in making a judicial determination as to whether the child is an "Indian child." An example of documentation indicating membership is a document issued by the Tribe, such as Tribal enrollment documentation.

§23.11 Notice.

- (a) In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or

Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Notice must include the requisite information identified in §23.111, consistent with the confidentiality requirement in §23.111(d)(6)(ix). Copies of these notices must be sent to the appropriate Regional Director listed in paragraphs (b)(1) through (12) of this section by registered or certified mail with return receipt requested or by personal delivery and must include the information required by §23.111.

...

(12) For child-custody proceedings in California or Hawaii, notices must be sent to the following address: Sacramento Regional Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

§23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?

(a) When a court knows or has reason to know that the subject of an involuntary foster-care-placement or termination-of-parental-rights proceeding is an Indian child, the court must ensure that:

(1) The party seeking placement promptly sends notice of each such child-custody proceeding (including, but not limited to, any foster-care placement or any termination of parental or custodial rights) in accordance with this section; and

(2) An original or a copy of each notice sent under this section is filed with the court together with any return receipts or other proof of service.

(b) Notice must be sent to:

(1) Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member) (*see* §23.105 for information on how to contact a Tribe);

(2) The child's parents; and

(3) If applicable, the child's Indian custodian.

(c) Notice must be sent by registered or certified mail with return receipt requested. Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.

(d) Notice must be in clear and understandable language and include the following:

(1) The child's name, birthdate, and birthplace;

(2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;

- (3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;
- (4) The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);
- (5) A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;
- (6) Statements setting out:
- (i) The name of the petitioner and the name and address of petitioner's attorney;
 - (ii) The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, to intervene in the proceedings.
 - (iii) The Indian Tribe's right to intervene at any time in a State-court proceeding for the foster-care placement of or termination of parental rights to an Indian child.
 - (iv) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel.
 - (v) The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.
 - (vi) The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of-parental-rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and §23.115.
 - (vii) The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.
 - (viii) The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.
 - (ix) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.
- (e) If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see *www.bia.gov*). To establish Tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided. The Bureau of Indian Affairs will not make a determination of Tribal membership but may, in some instances, be able to identify Tribes to contact.

(f) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal laws. To secure such translation or interpretation support, a court may contact or direct a party to contact the Indian child's Tribe or the local BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.

(g) If a parent or Indian custodian of an Indian child appears in court without an attorney, the court must inform him or her of his or her rights, including any applicable right to appointed counsel, right to request that the child-custody proceeding be transferred to Tribal court, right to object to such transfer, right to request additional time to prepare for the child-custody proceeding as provided in §23.112, and right (if the parent or Indian custodian is not already a party) to intervene in the child-custody proceedings.

California Welfare & Institutions Code

§ 224.2. Determination whether child is an Indian child; considerations; scope of inquiry; membership status

(a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 may be or has been filed, is or may be an Indian child. The duty to inquire begins with the initial contact, including, but not limited to, asking the party reporting child abuse or neglect whether he or she has any information that the child may be an Indian child.

(b) If a child is placed into the temporary custody of a county welfare department pursuant to Section 306 or county probation department pursuant to Section 307, the county welfare department or county probation department has a duty to inquire whether that child is an Indian child. Inquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled.

(c) At the first appearance in court of each party, the court shall ask each participant present in the hearing whether the participant knows or has reason to know that the child is an Indian child. The court shall instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(d) There is reason to know a child involved in a proceeding is an Indian child under any of the following circumstances:

(1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court that the child is an Indian child.

(2) The residence or domicile of the child, the child's parents, or Indian custodian is on a

reservation or in an Alaska Native village.

(3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child.

(4) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child.

(5) The court is informed that the child is or has been a ward of a tribal court.

(6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

(e) If the court, social worker, or probation officer has reason to believe that an Indian child is involved in a proceeding, but does not have sufficient information to determine that there is reason to know that the child is an Indian child, the court, social worker, or probation officer shall make further inquiry regarding the possible Indian status of the child, and shall make that inquiry as soon as practicable.

(1) There is reason to believe a child involved in a proceeding is an Indian child whenever the court, social worker, or probation officer has information suggesting that either the parent of the child or the child is a member or may be eligible for membership in an Indian tribe. Information suggesting membership or eligibility for membership includes, but is not limited to, information that indicates, but does not establish, the existence of one or more of the grounds for reason to know enumerated in paragraphs (1) to (6), inclusive, of subdivision (d).

(2) When there is reason to believe the child is an Indian child, further inquiry is necessary to help the court, social worker, or probation officer determine whether there is reason to know a child is an Indian child. Further inquiry includes, but is not limited to, all of the following:

(A) Interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.3.

(B) Contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member, or eligible for membership in, and contacting the tribes and any other person that may reasonably be expected to have information regarding the child's membership status or eligibility.

(C) Contacting the tribe or tribes and any other person that may reasonably be expected to have information regarding the child's membership, citizenship status, or eligibility. Contact with a tribe shall, at a minimum, include telephone, facsimile, or electronic mail contact to each tribe's designated agent for receipt of notices under the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.). Contact with a tribe shall include sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case.

(f) If there is reason to know, as set forth in subdivision (d), that the child is an Indian child, the party seeking foster care placement shall provide notice in accordance with paragraph (5) of subdivision (a) of Section 224.3.

(g) If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member or whether a biological parent is a member and the child is eligible for membership.

(h) A determination by an Indian tribe that a child is or is not a member of, or eligible for membership in, that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, shall be conclusive. Information that the child is not enrolled, or is not eligible for enrollment in, the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom.

(i)(1) When there is reason to know that the child is an Indian child, the court shall treat the child as an Indian child unless and until the court determines on the record and after review of the report of due diligence as described in subdivision (g), and a review of the copies of notice, return receipts, and tribal responses required pursuant to Section 224.3, that the child does not meet the definition of an Indian child as used in Section 224.1 and the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

(2) If the court makes a finding that proper and adequate further inquiry and due diligence as required in this section have been conducted and there is no reason to know whether the child is an Indian child, the court may make a finding that the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) does not apply to the proceedings, subject to reversal based on sufficiency of the evidence. The court shall reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry pursuant to Section 224.3.

(j) Notwithstanding a determination that the federal Indian Child Welfare Act of 1978 does not apply to the proceedings, if the court, social worker, or probation officer subsequently receives any information required by Section 224.3 that was not previously available or included in the notice issued under Section 224.3, the party seeking placement shall provide the additional information to any tribes entitled to notice under Section 224.3 and to the Secretary of the Interior's designated agent.

§ 224.3. Matters involving an Indian child; notice to interested parties; time to notify; proof

(a) If the court, a social worker, or probation officer knows or has reason to know, as described in subdivision (d) of Section 224.2, that an Indian child is involved, notice pursuant to Section 1912 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) shall be provided for hearings that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, as described in paragraph (1) of subdivision (d) of Section 224.1. The notice shall be sent to the minor's parents or legal guardian, Indian custodian, if any, and the child's tribe. Copies of all notices sent shall be served on all

parties to the dependency proceeding and their attorneys. Notice shall comply with all of the following requirements:

- (1) Notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended, but not required.
- (2) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service.
- (3) Notice of all Indian child custody hearings shall be sent by the party seeking placement of the child to all of the following:
 - (A) All tribes of which the child may be a member or citizen, or eligible for membership or citizenship, unless either of the following occur: (i) A tribe has made a determination that the child is not a member or citizen, or eligible for membership or citizenship. (ii) The court makes a determination as to which tribe is the child's tribe in accordance with subdivision (e) of Section 224.1, after which notice need only be sent to the Indian child's tribe.
 - (B) The child's parents.
 - (C) The child's Indian custodian.
- (4) Notice, to the extent required by federal law, shall be sent to the Secretary of the Interior's designated agent.
- (5) In addition to the information specified in other sections of this article, notice shall include all of the following information:
 - (A) The name, birth date, and birthplace of the Indian child, if known.
 - (B) The name of the Indian tribe in which the child is a member, or may be eligible for membership, if known.
 - (C) All names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known.
 - (D) A copy of the petition by which the proceeding was initiated.
 - (E) A copy of the child's birth certificate, if available.
 - (F) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section.
 - (G) The information regarding the time, date, and any location of any scheduled hearings.
 - (H) A statement of all of the following:
 - (i) The name of the petitioner and the name and address of the petitioner's attorney.
 - (ii) The absolute right of the child's parents, Indian custodians, and tribe to intervene in the proceeding.
 - (iii) The right of the child's parents, Indian custodians, and tribe to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe, absent objection by either parent and subject to declination by the tribal court.
 - (iv) The right of the child's parents, Indian custodians, and tribe to, upon request, be granted up to an additional 20 days from the receipt of the notice to prepare for the proceeding.
 - (v) The potential legal consequences of the proceedings on the future custodial and parental rights of the child's parents or Indian custodians.

(vi) That if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent the parents or Indian custodians pursuant to Section 1912 of the federal Indian Child Welfare Act of 1978.

(vii) In accordance with Section 827, the information contained in the notice, petition, pleading, and other court documents is confidential. Any person or entity notified shall maintain the confidentiality of the information contained in the notice concerning the particular proceeding and not reveal that information to anyone who does not need the information in order to exercise the tribe's rights under the federal Indian Child Welfare Act of 1978.

(b) Notice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, as described in paragraph (1) of subdivision (d) of Section 224.1, unless it is determined that the federal Indian Child Welfare Act of 1978 does not apply to the case in accordance with Section 224.2. After a tribe acknowledges that the child is a member of, or eligible for membership in, that tribe, or after a tribe intervenes in a proceeding, the information set out in subparagraphs (C), (D), (E), and (H) of paragraph (5) of subdivision (a) need not be included with the notice.

(c) Proof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing, except as permitted under subdivision (d).

(d) A proceeding shall not be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs, except for a hearing held pursuant to Section 319, provided that notice of the hearing held pursuant to Section 319 shall be given as soon as possible after the filing of the petition to declare the Indian child a dependent child. Notice to tribes of the hearing pursuant to Section 319 shall be consistent with the requirements for notice to parents set forth in Sections 290.1 and 290.2. With the exception of the hearing held pursuant to Section 319, the parent, Indian custodian, or tribe shall, upon request, be granted up to 20 additional days to prepare for that proceeding. This subdivision does not limit the rights of the parent, Indian custodian, or tribe to more than 10 days' notice when a lengthier notice period is required by law.

(e) With respect to giving notice to Indian tribes, a party is subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child or counsels a party to do so.

(f) The inclusion of contact information of any adult or child that would otherwise be required to be included in the notification pursuant to this section shall not be required if that person is at risk of harm as a result of domestic violence, child abuse, sexual abuse, or stalking.

(g) For any hearing that does not meet the definition of an Indian child custody proceeding set forth in Section 224.1, or is not an emergency proceeding, notice to the child's parents, Indian custodian, and tribe shall be sent in accordance with Sections 292, 293, and 295.

[For right to notice for other hearings not covered by 224.3, see §§290.1(a)(4) & (6); 290.2(a)(4) & (6); 291 (a)(4)&(6)&(g); 292 (a)(4)&(6); 293(a)(4) & (6);294(a)(3) & (5); 295(a)(4) & (6); 296; 297; & 727.4. For hearings not covered by 224.3 – parents and a tribe which has confirmed that the child is a member or eligible for membership in the tribe, are entitled to the same notices that all other parties are entitled to.]

§ 306. Duties of social workers; Indian child as ward of tribal court or subject to exclusive jurisdiction of tribe; temporary custody; transfer of custody to tribe; petition

(b) Upon receiving temporary custody of a child, the county welfare department shall inquire pursuant to Section 224.2, whether the child is an Indian child.

(c) If it is known or if there is reason to know the child is an Indian child, any county social worker in a county welfare department may take into custody, and maintain temporary custody of, without a warrant, the Indian child if removing the child from the physical custody of his or her parent, parents, or Indian custodian is necessary to prevent imminent physical damage or harm to the Indian child. The temporary custody shall be considered an emergency removal under Section 1922 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1922).

(d) If a county social worker takes or maintains an Indian child into temporary custody under subdivision (a), and the social worker knows or has reason to believe the Indian child is already a ward of a tribal court, or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings as recognized in Section 1911 of Title 25 of the United States Code, or reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, the county welfare agency shall notify the tribe that the child was taken into temporary custody no later than the next working day and shall provide all relevant documentation to the tribe regarding the temporary custody and the child's identity. If the tribe determines that the child is an Indian child who is already a ward of a tribal court or who is subject to the tribe's exclusive jurisdiction, the county welfare agency shall transfer custody of the child to the tribe within 24 hours after learning of the tribe's determination.

(e) If the social worker is unable to confirm that an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction of an Indian tribe as described in subdivision (d), or is unable to transfer custody of the Indian child to the child's tribe, prior to the expiration of the period permitted by subdivision (a) of Section 313 for filing a petition to declare the Indian child a dependent of the juvenile court, the county welfare agency shall file the petition. The county welfare agency shall inform the state court in its report for the hearing pursuant to Section 319, that the Indian child may be a ward of a tribal court or subject to the exclusive jurisdiction of the child's tribe. If the child welfare agency receives confirmation that an Indian child is a ward of a tribal court or subject to the exclusive jurisdiction of the Indian child's tribe between the time of filing a petition and the initial petition hearing, the agency shall inform the state court, provide a copy of the written confirmation, if any, and move to dismiss the petition. This subdivision does not prevent the court from authorizing a state or local agency to maintain temporary custody of

the Indian child for a period not to exceed 30 days in order to arrange for the Indian child to be placed in the custody of the child's tribe.

California Rules of Court

Rule 5.481. Inquiry and notice

(a) Inquiry

The court, court-connected investigator, and party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, preadoptive placement, or adoption have an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all proceedings identified in rule 5.480. The court, court-connected investigator, and party include the county welfare department, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator of the person, and appointed fiduciary.

(1) The party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, preadoptive placement, or adoption must ask the child, if the child is old enough, and the parents, Indian custodian, or legal guardians, extended family members, others who have an interest in the child, and where applicable the party reporting child abuse or neglect, whether the child is or may be an Indian child and whether the residence or domicile of the child, the parents, or Indian custodian is on a reservation or in an Alaska Native village, and must complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and attach it to the petition unless the party is filing a subsequent petition, and there is no new information.

(2) At the first appearance by a parent, Indian custodian, or guardian, and all other participants in any dependency case; or in juvenile wardship proceedings in which the child is at risk of entering foster care or is in foster care; or at the initiation of any guardianship, conservatorship, proceeding for custody under Family Code section 3041, proceeding to terminate parental rights, proceeding to declare a child free of the custody and control of one or both parents, preadoptive placement, or adoption proceeding; and at each hearing that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement or adoptive placement, as described in Welfare and Institutions Code section 224.1(d)(1), or that may result in an order for guardianship, conservatorship, or custody under Family Code section 3041; the court must:

(A) Ask each participant present whether the participant knows or has reason to know the child is an Indian child;

(B) Instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child; and

(C) Order the parent, Indian custodian, or guardian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

(3) If the parent, Indian custodian, or guardian does not appear at the first hearing, or is unavailable at the initiation of a proceeding, the court must order the person or entity that has the inquiry duty under this rule to use reasonable diligence to find and inform the parent, Indian custodian, or guardian that the court has ordered the parent, Indian custodian, or guardian to complete *Parental Notification of Indian Status* (form ICWA-020).

(4) If the social worker, probation officer, licensed adoption agency, adoption service provider, investigator, or petitioner knows or has reason to know or believe that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable by:

(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code section 1903, to gather the information listed in Welfare and Institutions Code section 224.3(a)(5), Family Code section 180(b)(5), or Probate Code section 1460.2(b)(5);

(B) Contacting the Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership; and

(C) Contacting the tribes and any other person who reasonably can be expected to have information regarding the child's membership status or eligibility. These contacts must at a minimum include the contacts and sharing of information listed in Welfare and Institutions Code section 224.2(e)(3).

(5) The petitioner must on an ongoing basis include in its filings a detailed description of all inquiries, and further inquiries it has undertaken, and all information received pertaining to the child's Indian status, as well as evidence of how and when this information was provided to the relevant tribes. Whenever new information is received, that information must be expeditiously provided to the tribes.

(b) Reason to know the child is an Indian child

(1) There is reason to know a child involved in a proceeding is an Indian child if:

(A) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court the child is an Indian child;

(B) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native village;

(C) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(D) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(E) The court is informed that the child is or has been a ward of a tribal court; or

(F) The court is informed that either parent or the child possesses an identification card indicating membership or citizenship in an Indian tribe.

(2) When there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court must confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member or whether a biological parent is a member and the child is eligible for membership. Due diligence must include the further inquiry and tribal contacts discussed in (a)(4) above.

(3) Upon review of the evidence of due diligence, further inquiry, and tribal contacts, if the court concludes that the agency or other party has fulfilled its duty of due diligence, further inquiry, and tribal contacts, the court may:

(A) Find there is no reason to know the child is an Indian child and the Indian Child Welfare Act does not apply. Notwithstanding this determination, if the court or a party subsequently receives information that was not previously available relevant to the child's Indian status, the court must reconsider this finding; or

(B) Find it is known the child is an Indian child, and that the Indian Child Welfare Act applies, and order compliance with the requirements of the act, including notice in accordance with (c) below; or

(C) Find there is reason to know the child is an Indian child, order notice in accordance with (c) below, and treat the child as an Indian child unless and until the court determines on the record that the child is not an Indian child.

(4) A determination by an Indian tribe that a child is or is not a member of, or eligible for membership in, that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, must be conclusive. Information that the child is not enrolled, or is not eligible for enrollment in, the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom.

(c) Notice

(1) If it is known or there is reason to know an Indian child is involved in a proceeding listed in rule 5.480, except for a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the social worker, petitioner, or in probate guardianship and conservatorship proceedings, if the petitioner is unrepresented, the court, must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian and Indian custodian of an Indian child, and the Indian child's tribe, in the manner specified in Welfare and Institutions Code section 224.3, Family Code section 180, and Probate Code section 1460.2 for all initial hearings that may result in the foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, or an order of guardianship, conservatorship, or custody under Family Code section 3041. For all other hearings, and for continued hearings,

notice must be provided to the child's parents, legal guardian or Indian custodian, and tribe in accordance with Welfare and Institutions Code sections 292, 293, and 295.

(2) If it is known or there is reason to know that an Indian child is involved in a wardship proceeding under Welfare and Institutions Code sections 601 and 602 et seq., the probation officer must send *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent or legal guardian, Indian custodian, if any, and the child's tribe, in accordance with Welfare and Institutions Code section 727.4(a)(2) in any case described by rule 5.480(2)(A)-(C).

(3) The circumstances that may provide reason to know the child is an Indian child include the circumstances specified in (b)(1).

(4) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.

Advisory Committee Comment

Federal regulations (25 C.F.R. § 23.105) and state law (Welf. & Inst. Code, § 224.2(e)) contain detailed recommendations for contacting tribes to fulfill the obligations of inquiry, due diligence, information sharing, and notice under the Indian Child Welfare Act and state law.

Rule 5.668. Commencement of hearing-explanation of proceedings (§§ 316, 316.2)

(a) Commencement of hearing

At the beginning of the initial hearing on the petition, whether the child is detained or not detained, the court must give advisement as required by rule 5.534 and must inform each parent and guardian present, and the child, if present:

(1) Of the contents of the petition;

(2) Of the nature of, and possible consequences of, juvenile court proceedings;

(3) If the child has been taken into custody, of the reasons for the initial detention and the purpose and scope of the detention hearing; and

(4) If the petition is sustained and the child is declared a dependent of the court and removed from the custody of the parent or guardian, the court-ordered reunification services must be considered to have been offered or provided on the date the petition is sustained or 60 days after the child's initial removal, whichever is earlier. The time for services must not exceed 12 months for a child three years of age or older at the time of the initial removal and must not exceed 6 months for a child who was under three years of age or who is in a sibling group in which one sibling was under three years of age at the time of the initial removal if the parent or guardian fails to participate regularly and make substantive progress in any court-ordered treatment program.

(b) Parentage inquiry

The court must also inquire of the child's mother and of any other appropriate person present as to the identity and address of any and all presumed or alleged parents of the child as set forth in section 316.2.

(c) Indian Child Welfare Act inquiry (§ 224.2(c) & (g))

(1) At the first appearance in court of each party, the court must ask each participant present at the hearing whether:

- (A) The participant knows or has reason to know the child is an Indian child;
- (B) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native village;
- (C) The child is or has ever been a ward of a tribal court; and
- (D) Either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

(2) The court must also instruct all parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child, and order the parents, Indian custodian, or guardian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).



(3) If there is reason to believe that the case involves an Indian child, the court must require the agency to proceed in accordance with section 224.2(e).



(4) If it is known, or there is reason to know, the case involves an Indian child, the court must proceed in accordance with rules 5.481 et seq. and treat the child as an Indian child unless and until the court determines on the record after review of the report of due diligence described in section 224.2(g) that the child does not meet the definition of an Indian child.

(d) Health and education information (§ 16010)

The court must order each parent and guardian present either to complete *Your Child's Health and Education* (form JV-225) or to provide the information necessary for the social worker or probation officer, court staff, or representative of the local child welfare agency to complete the form. The social worker or probation officer assigned to the dependency matter must provide the child's attorney with a copy of the completed form. Before each periodic status review hearing, the social worker or probation officer must obtain and include in the reports prepared for the hearing all information necessary to maintain the accuracy of form JV-225.

Judicial Council Forms

<i>ICWA-010(A)*</i> 	<i>Indian Child Inquiry Attachment</i>
<i>ICWA-020*</i> 	<i>Parental Notification of Indian Status</i>

ICWA-030* 	<i>Notice of Child Custody Proceeding for Indian Child</i>
ICWA-030(A) 	<i>Attachment to Notice of Child Custody Proceeding for Indian Child (Indian Child Welfare Act)</i>