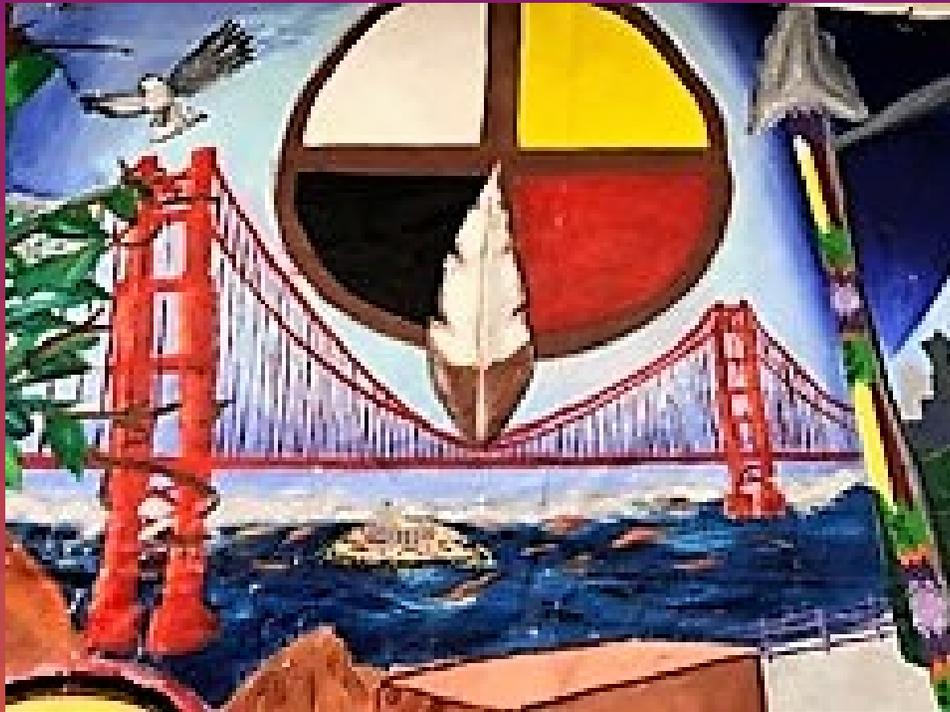


**City & County of San Francisco
Human Services Agency
INDIAN CHILD WELFARE ACT
Social Worker Manual**



**A Collaborative Project Between The
Bay Area Collaboration of American
Indian Resources (BACAIR) and the
City & County of San Francisco
Human Services Agency**





Indian Children

**Where we walk to school
each day,
Indian children used to
play --
All about our native land,
Where the shops and
houses stand.
And the trees were very
tall,
And there were no streets
at all,
Not a church and not a
steeple --
Only woods and Indian
people.**

*From For Days and Days: A Year
Round Treasury of Child Verse
by Annette Wynne (1919)*

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I. BACKGROUND

The Indian Child Welfare Act (ICWA) is a federal law that was passed in 1978 to protect and preserve Indian tribes and their most valuable resource, their children. ICWA was created to address the following issues:

- Large numbers of Native American children (an estimated 35%) were being removed from their families by state courts and county social services agencies;
- Most of these children ended up in non-Indian homes and institutions
- Native American children who were cut off from their tribal communities and cultures often later developed behavioral and emotional problems; and
- State and county officials often did not understand, ignored, or rejected the cultural or social customs of the child's tribal community.



To help remedy the situation, the ICWA imposed minimum federal procedural protections for Indian children involved in the dependency system or otherwise facing removal from parental custody. The purpose of ICWA is to:

- Protect the best interests of Native American children;
- Promote the stability and security of Native American tribes and families by the establishment of minimum federal standards for the removal of Native American children from their families, and the placement of such children in foster or adoptive homes that reflect the unique values of Native American culture; and
- Provide assistance to Native American tribes in the operation of children and family services programs.

In 2006, legislation was passed in California (SB 678) that codified into state law various provisions of the federal Indian Child Welfare Act and the BIA Guidelines for State Courts, including changes to dependency, delinquency, probate, and family law codes. This protocol addresses only the dependency process. SB 678 re-affirmed California's interest in protecting Indian children. On June 14, 2016 the final rule regarding an update to the revised ICWA Regulations was published and effective December 12, 2016 [FR vol. 81, No.114, June 14, 2016 pp 38778 - 38876]. Also on December 12, 2016, the newly revised ICWA Guidelines were issued to supplement and interpret the revised ICWA regulations. For additional information please visit: <http://www.courts.ca.gov/8709.htm>

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The proper implementation of the federal ICWA and state laws regarding Indian children is paramount in respecting Indian culture and heritage, preventing the breakup of Indian families and promoting tribal involvement on behalf of Indian children entering the child welfare system.

The ICWA contains procedures that help ensure that a child stays within an Native American community, encourages a team approach to improve outcomes, and increases both agency and tribal access to resources for at-risk Native American families. ICWA compliance also helps ensure that a dependency proceeding is not later invalidated by the juvenile court or overturned on appeal, possibly placing a child at greater risk and undermining permanency efforts.

"Being Indian is an attitude, a state of mind, a way of being in harmony with all things and all beings. It is allowing the heart to be the distributor of energy on this planet; to allow feelings and sensitivities to determine where energy goes; bringing aliveness up from the Earth and from the Sky, putting it in and giving it out from the heart."

- Brooke Medicine Eagle

This Protocol was developed to recognize the great demands placed on tribal and county child welfare social workers and to assist them in engaging in the collaboration necessary to meet both the Act's requirements and the child and family's needs. It is also recognition of the mutual concern for our communities' children and the benefit of coordinating resources and expertise to meet the needs of at risk Native American families. In addition, this Protocol supports the City & County of San Francisco's efforts and obligations under federal and state laws to ensure the safety of Indian children and the preservation of Indian families.

This Protocol is applicable to all new and existing referrals and cases that involve children who are of Native American descent or may be of Native American descent.



Photo courtesy of the Native American Health Center-SF site

In age, talk; in childhood, tears. - Hopi

II. History of San Francisco & California Indians

A. San Francisco

The original tribe to San Francisco is the Ohlone tribe, also known as, “Costanoan”. The term “Costanoan” you may see on historical documents or on lineage information presented by the families you work with, but Ohlone is the common term used in current everyday language. The Ohlone tribal communities are along the California coastline from San Francisco, the greater Bay Area counties and down to Monterey County. The Ohlone lived in a village community and were a hunter/gatherer society. Traditional healers helped individuals or families with social/emotional/ health/grieving issues, local herbs/ food were gathered seasonally to be utilized for healing or nourishment, trade was common with neighboring tribes and strong community/family ties were valued in creating thriving well-balanced tribal communities. “The Yelamus, about 200 people, held the north end of the Peninsula, the current City of San Francisco. They spent much of the year divided among four village clusters (Chutchui-Sitlintac, Tubsinte-Amuctac, Petlenuc, and Yelamu), each cluster moving between winter and summer villages in its own sub-territory. Yelamu lands included the San Francisco Presidio, Fort Mason, Fort Miley, Ocean Beach, and Fort Funston..., and perhaps Alcatraz Island as well.”¹ In 1769, Spanish conquistadors landed in the San Francisco Bay to begin claiming the land for the Spanish crown and the direction of the Doctrine of Discovery created by Pope Alexander VI of the Roman Catholic Church. The Spanish conquistadors created presidios, pueblos and the mission systems under the direction of Father Junipero Serra. Two forts were built in San Francisco. Mission San Francisco de Asis or “Mission Dolores” was the first mission in San Francisco. Later in this chapter, you will learn more information about the mission systems in California.

The Ohlone are vibrant tribal communities today and although each band is listed as non-federally recognized status, some bands have petitioned for federal recognition, so it’s important to research whether or not a band may have been recently federally recognized when a family states they have Ohlone or Costanoan lineage.



An Ohlone Indian Village
Courtesy of the California History Room, California State Library, Sacramento, California

¹ Ohlone/Costanoan Indians of the San Francisco Peninsula and their Neighbors, Yesterday and Today, pgs. 23-24
By: Randall Milliken, Laurence H. Shoup, and Beverly R. Ortiz

B. California & The United States

1. Pre-Contact



Tribes in California existed within tribal groupings and many in village systems. Tribes moved around their original lands according to seasons, hunting and gathering resources. There were no substance abuse issues, jails/prisons, mental health facilities or tolerance of violence against anyone within village life. If there was a violation of laws/customs of the tribal community, illness, death or other issues, there were traditional healers to work with the individual, family and/or community. The usage of banishment was rarely needed for those repeatedly in violation of laws/customs of the tribal community. Tribes highly valued their families, friends, nearby tribes, opportunities for celebration and socializing with food and games.

2. The Doctrine of Discovery

From 1452-1493, Pope Alexander VI issued a series of "Papal Bulls" indicating colonizers on behalf of the Spanish Empire had the right to "discover" land to possess, convert those already on the land into Christians and to overthrow already existing tribal nations. This "Doctrine of Discovery" became the colonizing strategy for European nations and U.S. Government. It became infused within court system decisions beginning in 1823 in the Johnson v. McIntosh case decision <https://www.gilderlehrman.org/content/doctrine-discovery-1493>

The first recorded contact with a non-Indian person was with Juan Rodriguez Cabrillo in 1542. Cabrillo died during his travels shortly after first contact. Explorers sailing for England, Spain and Russia made contact from the late 1500's-late 1700's. The California Indian population prior to first contact was over 200,000. After 1870, it was 12,000 <http://www.courts.ca.gov/3066.htm>.

3. The Mission Systems



MISSION DOLORES, IN SAN FRANCISCO, BEFORE AMERICANS CAME.

Courtesy of the California History Room, California State Library, Sacramento, California

Spain created missions from the San Diego coastline up to Sonoma. The intent was to “convert” Indians to Christianity, claim and control the land for the Spanish Crown.

Under the direction of Father Junipero [text box in a column next to pic of Father Serra] Serra the following occurred:

- Enslavements and forcible removals of children/families
- Physical, verbal, emotional and sexual violence
- Extreme punishments
- Families were separated by gender, age and often transferred around to different missions
- Nutritional deficiencies
- Not allowed to gather/hunt traditional foods
- Not allowed to bathe regularly or maintain regular hygiene habits
- Outbreaks of disease, health issues, stunted growth, and stress
- High death rates

Padre Antonio de la Concepcion Horra of Mission San Miguel report to the viceroy in Mexico, 1799:

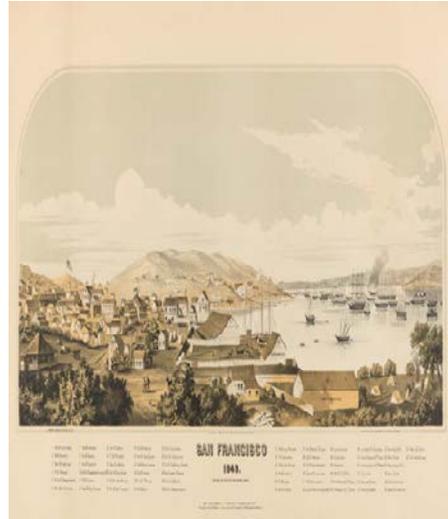
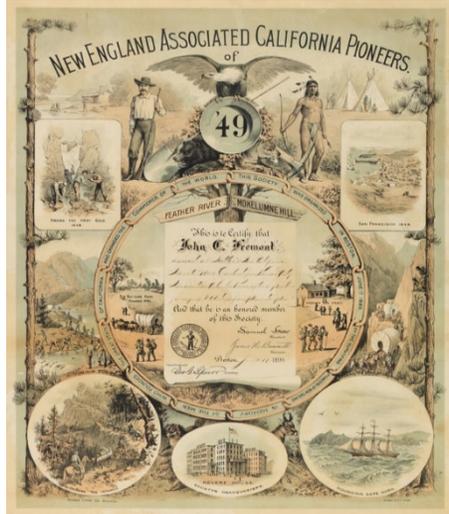
“The treatment shown to the Indians is the most cruel I have ever read in history. For the slightest things, they receive heavy flogging, are shackled and put in the stocks, and treated with so much cruelty that they are kept whole days without water.”

After giving his report, he was isolated, declared insane, and taken under armed guard out of California. (Heizer, 1978:102). In 1821 Mexico gained independence from Spain. The Mexican government ended Mission system in the 1830’s

http://www.cr.nps.gov/history/online_books/5views/5views1b.htm

From the late 1700’s, beginning with the Rivera Expedition, until the early 1800’s, the Spanish soldiers and expedition members established military town formations nearby the missions. Presidios and Forts were established for the military. Pueblos were created for independent farming communities. When the mission system ended in the 1830’s, “Ranchos” via land grants were provided and Native Americans who did not own a rancho went to live on a rancho to raise cattle, sheep and make household items.

4. The Gold Rush



Both Photos Courtesy of the California History Room, California State Library, Sacramento, California

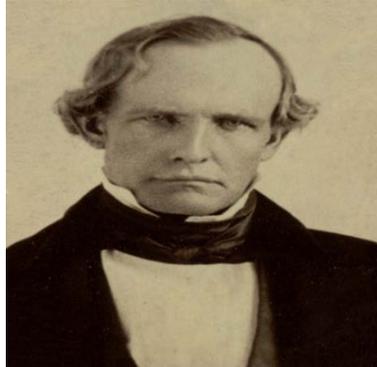
On January 24, 1848-James Marshall discovered gold at John Sutter's Mill in Coloma, California. The discovery of gold attracted many non-Indian families into California at the prospect of attaining wealth, status and land. The gold rush also brought a number of issues:

- Sacred lands were disturbed
- Mercury was used to extract gold that created toxic water sources
- Disease, murder, extreme sexual and physical violence
- Labor and sex trafficking through kidnapping or indentured servitude
- Violent forced removals of Indian people from their ancestral lands ordered by government officials and those seeking land

<http://www.militarymuseum.org/Miwok.html> and <http://www.1849.org/index2.html>

5. Governor Peter H. Burnett

Governor Peter H. Burnett was California's first governor. Governor Burnett and many new families to California did not want tribal communities to continue existing. Here are some excerpts from his first "State of the State" address in 1851:



"That a war of extermination will continue to be waged between the races until the Indian race becomes extinct must be expected."

-Governor Peter H. Burnett, 1851

English: [Peter Hardeman Burnett (1807-1895), first Governor of California] Date: circa 1860
<http://content.cdlib.org/ark:/13030/tf4g5004g5/?order=1> Author Unknown-Wikipedia

"We have suddenly spread ourselves over the country in every direction, and appropriated whatever portion of it we pleased to ourselves, without their [tribes] consent and without compensation. Although these small and scattered tribes have among them no regular government, they have some ideas of existence as a separate and independent people, and some conception of their right to the country acquired by long, uninterrupted, and exclusive possession. They have not only seen their country taken from them, but they see their ranks rapidly thinning from the effects of our diseases."....

State of the State Address, Delivered: January 6, 1851 <http://governors.library.ca.gov>

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6. The Treaty of Guadalupe Hidalgo

This treaty was signed between Mexico & The U.S. when the war ended on-February 2, 1848. Mexico surrendered to the United States approximately 55% of their previously claimed lands: Arizona, California, New Mexico, Texas, Colorado, Nevada, and Utah. California Indians had been designated as Mexican citizens when Mexico won its independence from Spain. Former Mexican citizens in these newly acquired territories for the U.S. were to be granted citizenship and property rights per the treaty. However, the treaty was not honored properly, which created issues with citizenship and land rights. <http://www.ourdocuments.gov/doc.php?doc=26> & http://www.pbs.org/keras/mexicanwar/war/wars_end_guadalupe.html

7. 1850-1860's Laws & Policies

This era for tribal communities was especially dangerous. Indentured servitude of tribal families was legal. An Indian person couldn't testify against a non-Indian person. It was illegal to sell alcohol to Indians. A non-Indian person could receive money for Indian scalps, heads, body parts or bodies to government officials. Treaty negotiations between the U.S. government and California occurred during the years of 1851-1852. Unfortunately, the U.S. Senate would not ratify the treaties and they were hidden for about 50 years. This created land loss, forcible removals of tribal communities, and water and mineral rights issues ensued. <http://bia.gov/WhoWeAre/RegionalOffices/Pacific/WeAre/index.htm>

8. Boarding Schools

The U.S. government created boarding schools with the intent to take the Indian out of the child to "save" them by exposing them to Christian religion to better assimilate them into American society. This assimilation project created separation of families and trauma.

The schools were meant to teach menial labor skills to keep Native Americans in a lower socio-economic status. Children were often forcibly taken from their tribal communities or parents were threatened by governmental agents into relinquishing custody of their children into the boarding school system and the children were taken to boarding schools often far from their home. Some of the experiences children often encountered in boarding schools included:

- Hair was cut short and DDT applied
- No tribal language or traditions allowed
- No family visitation was allowed often times
- Extreme physical/sexual/emotional/verbal abuse

For more information on boarding schools, a good resource is the documentary "Muffins for Granny" <http://www.ahf.ca/> (Aboriginal Healing Foundation) or visit the link http://www.cr.nps.gov/history/online_books/5views/5views1d.htm



Courtesy of the California History Room, California State Library, Sacramento, California.

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9. 20th Century US Laws & Policies

• Asylums

“...Alaskan adults and children were arrested, convicted of being insane, and sent by the federal government to live at Morningside Hospital in Portland, Oregon. They were taken from their families and communities by dog sled, train and boat. In the end, at least 3,500 Alaskans were sent to Morningside between 1904 and the 1960s, when Morningside was finally closed. Many were never heard from by their families again.”

<http://www.morningsidehospital.com/>

In 1898, Congress passed a bill enacting Hiawatha Insane Asylum, operated by the federal government, to house Native Americans that federal agents deemed to be “insane”. The asylum was in Canton, South Dakota.

<http://indiancountrytodaymedianetwork.com/2011/11/04/hiawatha-asylum-insane-indians>

• Sterilization of Native American Women

Native American women were sometimes forcibly sterilized without their consent by the Federal government and their institutions or agencies.

• Indian Citizenship Act-1924

Indians were granted U.S. citizenship in 1924 <http://www.airpi.org/projects/history.html>

• Indian Reorganization Act-1934

Wheeler-Howard Act -48 Stat. 984 -25 U.S.C. § 461 et seq)—“An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians”

<https://tm112.community.uaf.edu/files/2010/09/The-Indian-Reorganization-Act.pdf>

• Termination Era-1945-1961

Trust relationships were eliminated between the federal and Tribal governments. Over 50 Tribes were terminated by the U.S. government and not federally recognized.

• Indian Adoption Era-1950's

This era began from assimilation projects. Native American children were adopted into non-Indian families to assimilate them into American society and were thought to be “better cared for” in non-Indian homes.

• Relocation Era-1950's-1960's

The relocation era was another attempt at assimilation of Native American families into American society in urban communities. Native Americans living on reservations were approached by U.S. government officials, encouraged to move to large metropolitan areas, and promised:

- Travel assistance to a city (Los Angeles & Bay Area major California hubs)
- Employment & Job Training
- Child care
- Housing

Unfortunately, these promises were never entirely fulfilled and made it financially impossible for some families to return back to their Tribal lands permanently or even for ceremony. This era was the beginning of intertribal cultural centers and why some urban areas in the nation have many out of state tribal members in these historically identified metropolitan areas.

• American Indian Religious Freedoms Act of 1978

Native people were “allowed” by the federal government to exercise their Tribal belief systems, cultural/traditional practices and possession of sacred objects on public lands. Prior to 1978 it was illegal <http://www.airpi.org/projects/history.html>

III. Tribal Sovereignty & Cultural Awareness

A Guide to Build Cultural Awareness American Indian and Alaska Native Communities



The purpose of this guide is to provide basic information for Social Workers and who provide or coordinate services for American Indian/Alaska Native (AI/AN) children and families.

This guide is intended to serve as a general briefing to enhance cultural competence while providing services to AI/AN communities. Cultural competence is defined as the ability to function effectively in the context of cultural differences.

Social Workers should use this guide to ensure the following Five Elements of Cultural Competence* are being addressed:

1. Awareness, acceptance and valuing of cultural differences
2. Awareness of one's own culture and values
3. Understanding the range of dynamics that result from the interaction between people of different cultures
4. Developing cultural knowledge of the particular community served or to access cultural brokers who may have that knowledge
5. Ability to adapt individual interventions, programs, and policies to fit the cultural context of the individual, family, or community.

*Adapted from Cross, T., Bazron, B., Dennis, K., and Isaacs, M. (1989). Towards A Culturally Competent System of Care Volume I. Washington, D.C.: Georgetown University Child Development Center, CASSP Technical Assistance Center.

This guide was developed by an ad hoc group of U.S. Public Health Service Commissioned Officers, American Indian/Alaska Native (AI/AN) professionals, and family advocates working together from 2006-2007. The abbreviation AI/AN is used for American Indian/Alaska Native in the interest of space and consistency.

This publication may be downloaded or ordered at www.SAMHSA.gov/shin. Or, call SAMHSA's Health Information Network at 1-877-SAMHSA-7 (1-877-726-4727) DHHS Publication No. (SMA) 08-4354

Myths and Facts

Myth: AI/AN people are spiritual and live in harmony with nature.

Fact: The idea of all AI/ANs having a mystical spirituality is a broad generalization. This romantic stereotype can be just as damaging as other more negative stereotypes and impairs one's ability to provide services to AI/ANs as real people.

Myth: AI/AN people have distinguishing physical characteristics, and you can identify them by how they look.

Fact: Due to Tribal diversity, as well as hundreds of years of inter-Tribal and inter-racial marriages, there is no single distinguishing "look" for AI/ANs

Myth: Casinos have made AI/ANs rich.

Fact: Out of more than 560 Federally recognized tribes, only 224 operate gaming facilities. About three-fourths of those tribes reinvest revenue in the community. In 2006, only 73 tribes distributed direct payments to individual Tribal members.

Myth: The Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) are the only agencies responsible for working with tribes.

Fact: The U.S. Constitution, Executive Orders, and Presidential memos outline policy requiring that ALL executive departments have the responsibility to consult with and respect Tribal sovereignty.

Myth: AI/ANs have the highest rate of alcoholism.

Fact: While many tribes and AI/AN villages do experience the negative effects of alcohol abuse, what is less known is that AI/ANs also have the highest rate of complete abstinence. When socioeconomic level is accounted for in a comparison group, alcoholism rates are no different for AI/ANs than for other ethnic or racial groups. Most AI/AN-sponsored events ban the use of alcohol and even "social" drinking is often frowned upon.

Myth: AI/AN people all get "Indian money" and don't pay taxes.

Fact: Few Tribal members receive payments from the BIA for land held in trust and most do not get significant "Indian money." AI/ANs pay income tax and sales tax like any other citizen of their State while the U.S. Alaska Natives may get dividend payments from their Native Corporation or the State of Alaska as State citizens.

Tribal Sovereignty

- There is a unique legal and political relationship between the Federal government and Indian tribes and a special legal relationship with Alaska Native Corporations.
- The U.S. Constitution (Article I Section 8, and Article 6), treaties, Supreme Court decisions, Federal laws, and Executive Orders provide authority to the Federal government for Indian affairs with Federally recognized tribes.
- Presently, there are more than 560 Federally recognized AI/AN tribes in the United States. Over half of these are Alaska Native villages. Additionally, there are almost 245 non-Federally recognized tribes. Many of those are recognized by their States and are seeking Federal recognition.
- As sovereign nations, Tribal governments have the right to hold elections, determine their own citizenship (enrollment), and to consult directly with the U.S. government on policy, regulations, legislation, and funding.
- Tribal governments can create and enforce laws that are stricter or more lenient than State laws, but they are not subservient to State law. State laws cannot be applied where they interfere with the right of a tribe to make its own laws protecting the health and welfare of its citizens, or where it would interfere with any Federal interest.
- Criminal legal jurisdiction issues are very complex, depend on a variety of factors, and must be assessed based on the specific law as applied to a specific tribe. In general, the Federal law applies.





Regional and Cultural Differences

Prior to European contact, AI/AN communities existed throughout various areas of North America. Federal policies led to voluntary and forced relocation from familiar territory to the current day reservation system.

When the reservation system was formed in the late 1800s, some bands and tribes were forced by the U.S. government to live together. In some instances, these groups were related linguistically and culturally; in others, they were not closely related and may even have been historic enemies.

On reservations where different AI/AN groups were forced to co-exist, repercussions occurred that still can be experienced today in those communities. Historic rivalries, family or clan conflicts, and “Tribal politics” may present challenges for an outsider unaware of local dynamics who is trying to interact with different groups in the community.

While there is great diversity across and within tribes, there are within-region similarities based on adaptation to ecology, climate, and geography (including traditional foods); linguistic and cultural affiliations; and sharing of information for long periods of time.

Differences in cultural groups are closely related to regional differences and may be distinguished by their language or spiritual belief systems. They are also a result of the diversity of historic homelands across the Nation and migration patterns of Tribal groups.

Cultures developed in adaptation to their natural environment and the influence of trade and interaction with non-Indians and other AI/AN groups.

Urban Indian communities can be found in most major metropolitan areas. These populations are represented by members of a large number of different tribes and cultures that have different degrees of traditional culture and adaptation to Western culture norms. They form a sense of community through social interaction and activities, but are often “invisible,” geographically disbursed, and multi-racial.

Cultural Customs



Cultural customs can be viewed as a particular group or individual's preferred way of meeting their basic human needs and conducting daily activities as passed on through generations.

Specific cultural customs among AI/AN groups may vary significantly, even within a single community.

Customs are influenced by: ethnicity, origin, language, religious/spiritual beliefs, socioeconomic status, gender, sexual orientation, age, marital status, ancestry, history, gender identity, geography,

Cultural customs are often seen explicitly through material culture such as food, dress, dance, ceremony, drumming, song, stories, symbols, and other visible manifestations.

Such outward cultural customs are a reflection of a much more ingrained and implicit culture that is not easily seen or verbalized. Deeply held values, general world view, patterns of communication, and interaction are often the differences that affect the helping relationship.

A common practice of a group or individual that represents thoughts, core values, and beliefs may be described by community members as "the way we do things" in a particular tribe, community, clan, or family. This includes decision-making processes.

Respectful questions about cultural customs are generally welcomed, yet not always answered

Any questions about culture should be for the purpose of improving the service provider's understanding related to the services being provided.

Many AI/AN people have learned to "walk in two worlds" and will observe the cultural practices of their AI/AN traditions when in those settings, and will observe other cultural practices when in

Sharing food is a way of welcoming visitors, similar to offering a handshake. Food is usually offered at community meetings and other gatherings as a way to build relationships.

Spirituality



A strong respect for spirituality, whether traditional (prior to European contact), Christian (resulting from European contact), or a combination of both, is common among all AI/AN communities and often forms a sense of group unity.

Many AI/AN communities have a strong church community and organized religion that is integrated within their culture.

Traditional spirituality and practices are integrated into AI/AN cultures and day-to-day living.

Traditional spirituality and/or organized religions are usually community-oriented, rather than individual-oriented.

Spirituality, world view, and the meaning of life are very diverse concepts among regions, tribes, and/or individuals.

Specific practices such as ceremonies, prayers, and religious protocols will vary among AI/AN communities.

A blend of traditions, traditional spiritual practices, and/or mainstream faiths may coexist. It is best to inquire about an individual's faith or beliefs instead of making assumptions, but be aware that many AI/AN spiritual beliefs and practices are considered sacred and are not to be shared publicly.

Until passage of the Indian Religious Freedom Act in 1978, many traditional AI/AN practices were illegal and kept secret.

Social/health problems and their solutions are often seen as spiritually based and as part of a holistic world view of balance between mind, body, spirit, and the environment.

It is a common practice to open and close meetings with a prayer or short ceremony. Elders are often asked to offer such opening and closing words and given a small gift as a sign of respect for sharing this offering.



Communication Styles

Nonverbal Messages

- AI/AN people communicate a great deal through non-verbal gestures. Careful observation is necessary to avoid misinterpretation of non-verbal behavior.
- AI/AN people may look down to show respect or deference to elders, or ignoring an individual to show disagreement or displeasure.
- A gentle handshake is often seen as a sign of respect, not weakness.

Humor

- AI/AN people may convey truths or difficult messages through humor, and might cover great pain with smiles or jokes. It is important to listen closely to humor, as it may be seen as invasive to ask for too much direct clarification about sensitive topics.
- It is a common conception that “laughter is good medicine” and is a way to cope. The use of humor and teasing to show affection or offer corrective advice is also common.

Indirect Communication

- It is often considered unacceptable for an AI/AN person to criticize another directly. This is important to understand, especially when children and youth are asked to speak out against or testify against another person. It may be considered disloyal or disrespectful to speak negatively about the other person.
- There is a common belief that people who have acted wrongly will pay for their acts in one way or another, although the method may not be through the legal system.

Storytelling

- Getting messages across through telling a story (traditional teachings and personal stories) is very common and sometimes in contrast with the “get to the point” frame of mind in non-AI/AN society.

Historic Distrust

- Establishing trust with members of an AI/AN community may be difficult. Many Tribal communities were destroyed due to the introduction of European infectious illnesses. Similarly, many treaties made by the U.S. government with Tribal nations were broken.
- From the 1800s through the 1960s, government military-style boarding schools and church-run boarding schools were used to assimilate AI/AN people. Children were forcibly removed from their families to attend schools far from home where they were punished for speaking their language and practicing spiritual ways in a stated effort to “kill the Indian, save the child.” Many children died from infectious diseases, and in many schools physical and sexual abuse by the staff was rampant. Boarding school survivors were taught that their traditional cultures were inferior or shameful, which still affects many AI/AN communities today.
- The Federal “Termination Policy” in the 1950s and 1960s ended the government-to-government relationship with more than 100 Federally recognized tribes. The result was disastrous for those tribes due to discontinued Federal support, loss of land held in trust, and loss of Tribal identity. Most of the tribes terminated during this time were able to re-establish Federal recognition through the Congressional process in the 1980s and 1990s.
- The Federal “Relocation Policy” in the 1950s and 1960s sought to move AI/AN families to urban areas, promising jobs, housing, and a “new life.” Those that struggled and stayed formed the core of the growing Urban Indian populations. Ultimately, many families returned home to their reservation or home community. Today, many families and individuals travel between their home community and urban communities for periods of time to pursue education and job opportunities.
- Churches and missionaries have a long history of converting AI/AN people to their religions, and in the process often labeled traditional cultural practices such as songs, dances, dress, and artwork as “evil.” Today there is a diverse mix of Christian beliefs and traditional spirituality within each AI/AN community.

Cultural Identity



When interacting with individuals who identify themselves as AI/AN, it is important to understand that each person has experienced their cultural connection in a unique way.

An individual's own personal and family history will determine their cultural identity and practices, which may change throughout their lifespan as they are exposed to different experiences.

The variation of cultural identity in AI/AN people can be viewed as a continuum that ranges between one who views himself or herself as "traditional" and lives their traditional culture daily, to one who views himself or herself as "Indian "or Native", but has little knowledge or interest in their traditional cultural practices.

Many AI/AN families are multicultural and adapt to their surrounding culture.

From the 1950s to the 1970s, the Federal government, adoption agencies, state child welfare programs, and churches adopted out thousands of AI/AN children to non-AI/AN families. The Indian Child Welfare Act was passed in 1978 to end this practice. There are many AI/AN children, as well as adults, who were raised with little awareness or knowledge of their traditional culture; they may now be seeking a connection with their homelands, traditional culture, and unknown relatives.

When asked "Where are you from?" most AI/AN people will identify the name of their tribe/village and/or the location of their traditional or family homeland. This is often a key to self-identity.

It is important to remember that most Alaska Natives do not refer to themselves as "Indians."

Age is another cultural identity consideration. Elders can be very traditional while younger people can either be multicultural or non-traditional. In many communities, leaders and elders are worried about the loss of the use of the traditional language among children and young adults. Still, in other communities, young people are eagerly practicing the language and other cultural traditions and inspiring older generations who may have felt shame in their identity growing up as AI/AN.



Veterans and Elders

Elders play a significant role in Tribal communities. The experience and wisdom they have gained throughout their lifetime, along with their historical knowledge of the community, are considered valuable in decision-making processes.

It is customary in many Tribal communities to show respect by allowing elders to speak first, not interrupting, and allowing time for opinions and thoughts to be expressed.

In group settings, people will often ask the elder's permission to speak publicly, or will first defer to an elder to offer an answer.

Elders often offer their teaching or advice in ways that are indirect, such as through storytelling.

When in a social setting where food is served, elders are generally served first, and in some traditional Alaska Native villages, it is the men who are served first by the women. It is disrespectful to openly argue or disagree with an elder.

AI/AN communities historically have high rates of enlistment in the military service. Often, both the community and the veteran display pride for military service.

Veterans are also given special respect similar to that of elders for having accepted the role of protector and experienced personal sacrifice. AI/AN community members recognize publicly the service of the veteran in formal and informal settings.

AI/AN community members who are veterans are honored at ceremonies and pow wows, and by special songs and dances. They have a special role in the community, so veterans and their families are shown respect by public acknowledgment and inclusion in public events.

The AI/AN community's view of Uniformed Service members being deployed to an AI/AN community in times of crisis or disaster (such as the U.S. Public Health Service Commissioned Corps or National Guard) will vary greatly. There may be respect for the uniform similar to that shown to a veteran, but there may also be feelings of distrust related to the U.S. government's and the military's historical role and presence in AI/AN communities.



Strengths in AI/AN Communities

It is easy to be challenged by the conditions in AI/AN communities and to not see beyond the impact of the problems or crisis.

Recognizing and identifying strengths in the community can provide insight for possible interventions. Since each community is unique, look to the community itself for its own identified strengths, such as:

- Extended family and kinship ties;
- Long-term natural support systems;
- Shared sense of collective community responsibility;
- Physical resources (e.g., food, plants, animals, water, land);
- Indigenous generational knowledge/wisdom;
- Historical perspective and strong connection to the past;
- Survival skills and resiliency in the face of multiple challenges;
- Retention and reclamation of traditional language and cultural practices;
- Ability to “walk in two worlds” (mainstream culture and the AI/AN cultures); and
- Community pride.

Health and Wellness Challenges

- Concepts of health and wellness are broad. The foundations of these concepts are living in a harmonious balance with all elements, as well as balance and harmony of spirit, mind, body, and the environment. Health and wellness may be all encompassing, not just one's own physical body; it is holistic in nature. AI/ANs define what health and wellness is to them, which may be very different from how Western medicine defines health and wellness.
- Many health and wellness issues are not unique to AI/AN communities, but are statistically higher than in the general population. It is important to learn about the key health issues in a particular community.
- Among most AI/AN communities, 50 percent or more of the population is under 21 years of
- Health disparities exist with limited access to culturally appropriate health care in most AI/AN communities.
- Only 55 percent of AI/AN people rely on the Federally funded IHS or Tribally operated clinics/hospitals for care.
- Suicide is the second leading cause of death among AI/AN people age 10-34. The highest rates are among males between the ages of 24 and 34 and 15 and 24, respectively.
- Following a death by suicide in the community, concern about suicide clusters, suicide contagion, and the possibility of suicide pacts may be heightened. A response to a suicide or other traumatic occurrence requires a community-based and culturally competent strategy.
- Prevention and intervention efforts must include supporting/enhancing strengths of the community resources as well as individual and family clinical interventions.





Self-Awareness and Etiquette

- Prior to making contact with a community, examine your own belief system about AI/AN people related to social issues, such as mental health stigma, poverty, teen suicide, and drug or alcohol use.
- You are being observed at all times, so avoid making assumptions and be conscious that you are laying the groundwork for others to follow.
- Adapt your tone of voice, volume, and speed of speech patterns to that of local community members to fit their manner of communication style.
- Preferred body language, posture, and concept of personal space depend on community norms and the nature of the personal relationship. Observe others and allow them to create the space and initiate or ask for any physical contact.
- You may experience people expressing their mistrust, frustration, or disappointment from other situations that are outside of your control. Learn not to take it personally.
- If community members tease you, understand that this can indicate rapport-building and may be a form of guidance or an indirect way of correcting inappropriate behavior. You will be more easily accepted and forgiven for mistakes if you can learn to laugh at yourself and listen to lessons being brought to you through humor.
- Living accommodations and local resources will vary in each community. Remember that you are a guest. Observe and ask questions humbly when necessary.
- Rapport and trust do not come easily in a limited amount of time; however, don't be surprised if community members speak to you about highly charged issues (e.g., sexual abuse, suicide) as you may be perceived as an objective expert.
- Issues around gender roles can vary significantly in various AI/AN communities. Males and females typically have very distinct social rules for behavior in every day interactions and in ceremonies. Common behaviors for service providers to be aware of as they relate to gender issues are eye contact, style of dress, physical touch, personal space, decision making, and the influence of male and/or female elders.
- Careful observation and seeking guidance from a community member on appropriate gender-specific behavior can help service providers to follow local customs and demonstrate cultural respect.

Etiquette – Do’s

- Avoid stereotyping based on looks, language, dress, and other outward appearances.
- Learn how the community refers to itself as a group of people (e.g., Tribal name).
- Be honest and clear about your role and expectations and be willing to adapt to meet the needs of the community. Show respect by being open to other ways of thinking and behaving.
- Listen and observe more than you speak. Learn to be comfortable with silence or long pauses in conversation by observing community members’ typical length of time between turns at talking.
- Casual conversation is important to establish rapport, so be genuine and use self-disclosure (e.g., where you are from, general information about children or spouse, personal interests).
- Avoid jargon. An AI/AN community member may nod their head politely, but not understand what you are saying.
- It is acceptable to admit limited knowledge of AI/AN cultures, and invite people to educate you about specific cultural protocols in their community.
- If you are visiting the home of an AI/AN family, you may be offered a beverage and/or food, and it is important to accept it as a sign of respect.
- Explain what you are writing when making clinical documentation or charting in the presence of the individual and family.
- During formal interviews, it may be best to offer general invitations to speak, then remain quiet, sit back, and listen. Allow the person to tell their story before engaging in a specific line of questioning.
- Be open to allow things to proceed according to the idea that “things happen when they are supposed to happen.”
- Respect confidentiality and the right of the tribe to control information, data, and public information about services provided to the tribe.



Etiquette – Don'ts

- Avoid stereotyping based on looks, language, dress, and other outward appearances.
- Avoid intrusive questions early in conversation.
- Do not interrupt others during conversation or interject during pauses or long silences.
- Do not stand too close to others and/or talk too loud or fast.
- Be careful not to impose your personal values, morals, or beliefs.
- Be careful about telling stories of distant AI/AN relatives in your genealogy as an attempt to establish rapport unless you have maintained a connection with that AI/AN community.
- Be careful about pointing with your finger, which may be interpreted as rude behavior in many tribes.
- Avoid frequently looking at your watch and do not rush things.
- Avoid pressing all family members to participate in a formal interview.
- During a formal interview, if the person you are working with begins to cry, support the crying without asking further questions until they compose themselves and are ready to speak.
- Do not touch sacred items, such as medicine bags, other ceremonial items, hair, jewelry, and other personal or cultural things.
- Do not take pictures without permission.
- NEVER use any information gained by working in the community for personal presentations, case studies, research, and so on, without the expressed written consent of the Tribal government or Alaska Native Corporation.

IV. RIGHTS OF TRIBES

A. DETERMINATION OF ELIGIBILITY

It is the exclusive determination of the tribe whether a child is or is not eligible to be a tribal member. Depending on the tribe's membership laws, enrollment may or may not be necessary for the child to be considered a member. There is no single way to determine Native American heritage by race, physical characteristics, surname, or residence, although these factors might contribute to triggering ICWA procedures by leading the social worker to have a reason to know the child may be Indian. Whether a child is Indian is not a racial determination but a question of political status. Indian tribes are recognized as sovereign entities existing within the United States. Tribes and the U.S. government have a "political" relationship as between two nations, not a relationship based upon racial classification. Within tribes, membership is determined in a variety of ways, with specific requirements varying from tribe to tribe. Ultimately, only the tribe can decide who is a member or eligible for membership and that determination is binding. (Welf. & Inst. Code § 224.3 (e)(1).)

B. RIGHTS OF FEDERALLY RECOGNIZED TRIBES

The ICWA states, "In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have the right to intervene at any point in the proceeding." (25 U.S.C. §1911 (c).) An intervening tribe may fully participate as a party to a proceeding. Even if the tribe chooses not to intervene or otherwise participate in the case, all ICWA requirements apply so long as the child is an "Indian child".

- *The Indian child's tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding
- *The Native American tribe has the following rights: Exercise tribal jurisdiction by asking that the case be moved to tribal court as defined by the tribe;
- *Be notified about the Indian child dependency proceeding;
- *Ask for up to 20 extra days to get ready for a hearing except the detention hearing;
- *Deny a parent or Indian custodian's request for the case to be moved to tribal court as defined by the tribe;
- *Review documents about the case that the court has on file (if tribe intervenes as a party, tribe is entitled to copies of all documents);
- *Examine records kept by the DSS on the placement of tribal children;
- *Assert certain tribal laws or customs to the Indian child custody proceeding, e.g. definition of "extended family";
- *Be consulted on appropriate case planning and services for the Indian parents and Indian child;
- *Be consulted each time there is a placement decision concerning the Indian child;
- *Be consulted about permanency planning for the Indian child.
- *Assert a different order of placement between the categories of placement preferences;
- *Submit written reports and/or provide recommendations to the court;
- *Perform other duties as requested or approved by the court.



Photo and quote courtesy of the Fresno ICWA Social Worker Manual

All plants are our brothers and sisters. They talk to us and if we listen, we can hear them. - Arapaho

C. RIGHTS OF NON-FEDERALLY-RECOGNIZED TRIBES

San Francisco Human Services Agency has taken the stance that Non-Federally Recognized Tribes children will be case managed in the same manner as those from a federally recognized tribe. The Department of Social Services will make similar recommendations to the court, but since there is no legal obligation, the Court may choose not to agree with the recommendation.

The Following is the Court Mandate:

Unless permitted to participate by the court pursuant to WIC Section 306.6, ICWA may not apply to a child dependency proceeding when a child is a member of or eligible for membership in a non-federally recognized tribe. Active efforts, placement preference, and the testimony of a qualified expert witness are not required for these cases. However, the court shall make this determination, not the social worker.

Non-federally recognized tribes are not entitled to notice of the proceedings. However, under current state law, the court may permit the child's non-federally recognized Native American tribe to participate in the child dependency proceeding upon request of the tribe. The court may limit participation to the tribe with which the child has the most significant contact.

There is limited information on non-federally-recognized tribes. Below are some web sites that may be of assistance. It is recommended that the phone number and address of the non-federally-recognized tribe be obtained from the parents.

If the court permits a non-federally-recognized tribe to participate in the child dependency proceeding, the tribe may do the following with the permission of the court:

Be present at the hearing;

-Address the court;

-Request and receive notice of hearings;

-Request to examine court documents relating to the proceeding;

-Present information to the court that is relevant to the proceeding;

-Submit written reports and recommendations to the court; and

-Perform other duties as requested or approved by the court.

If the court orders that a non-federally-recognized tribe is to receive notice of hearings, mail the regular notice forms by 1st Class mail. **The ICWA 030 is NOT to be used to notice non-federally-recognized tribes.**

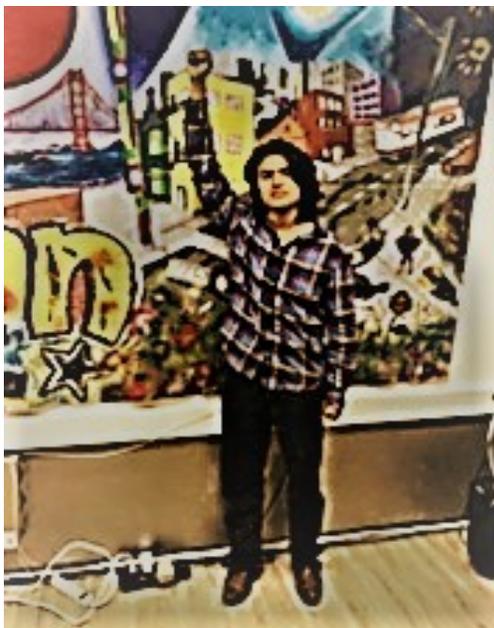


Photo courtesy of the Native American Health Center-SF site

All things share the same breath - the beast, the tree, the man, the air shares its spirit with all the life it supports." - Chief Seattle, Suquamish Chief

D. OTHER ELIGIBILITY ISSUES

1. If an Indian child is a member of more than one federally-recognized tribe or is eligible for membership in more than one tribe but is not a member of any of them, the court shall make a determination, in writing together with the reasons for it, as to which tribe is the Indian child's tribe for purposes of the Indian child custody proceeding. (Welf. & Inst. Code § 224.1(d).) The tribe with which the child has more significant contact should be designated as the Indian child's tribe. The social worker shall inform the court of the following factors in the court report:

- a) Length of residence on or near the reservation of each tribe and frequency of contacts with each tribe;
- b) Child's participation in activities of each tribe;
- c) Child's fluency in the language of each tribe;
- d) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes;
- e) Residence on or near one of the tribes' reservation by the child's relatives;
- f) Tribal membership of custodial parent or Native American custodian;
- g) Interest asserted by each tribe in response to the notice sent; and
- h) The child's self-identification.

2. If the child is a member of or becomes a member of only one tribe, that tribe should be designated the Indian child's tribe even though the child is eligible for membership in another tribe.



Photo courtesy of Michelle Antone

V. ICWA OVERVIEW

One of the keys to ICWA compliance is the timely identification of Indian children and families. Early identification of an Indian child is the best assurance that the Department can meet ICWA's objectives and that families are offered culturally-appropriate services that will maximize their chances of staying together. The ICWA sets 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 and the biological child of a member. The Department must treat a matter as an "ICWA case" if the social worker "knows or has reason to know the child may be Indian." (25 U.S.C. §1912; Welf. & Inst. Code § 224.3 (e).)

A. WHO IS AN INDIAN CHILD?

The ICWA and California law define an "Indian child" as an unmarried person under the age of 18 who:

- is a member of a federally-recognized Indian tribe; **or**
- is eligible for membership in a federally recognized Indian tribe **and** he or she is the biological child of a member of a federally-recognized Indian tribe. (25 U.S.C. §1903; Welf. & Inst. Code § 224.1 (a).)

Information received that the child is not enrolled nor eligible for enrollment is not determinative of a child's status unless and until the tribe confirms in writing that enrollment is a prerequisite for membership. (Welf. & Inst. Code § 224.3 (e) (1).) It is important to keep in mind that children may be enrolled or eligible for enrollment in a tribe, even if their parents are not a member. A child should be identified, at least provisionally, as an "Indian child" whenever a parent identifies him or herself or the minor as a member of a tribe or when other factors indicate such membership or eligibility for membership.

It is in the best interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of any of the following:

- 1)Whether or not the Indian child was in the physical custody of an Indian parent or Indian custodian at the commencement of a child custody proceeding;
- 2)Whether or not parental rights have been terminated; or,
- 3)Whether or not the Indian child has lived on an Indian reservation.

****UNITED STATES CODE TITLE 25 - INDIANS CHAPTER 21 - INDIAN CHILD WELFARE - (Public Law 95-608, November 8, 1978)**

The traditions of our people are handed down from father to son. The Chief is considered to be the most learned, and the leader of the tribe. The Doctor, however, is thought to have more inspiration. He is supposed to be in communion with spirits... He cures the sick by the laying of hands, and prayers and incantations and heavenly songs. He infuses new life into the patient, and performs most wonderful feats of skill in his practice.... He clothes himself in the skins of young innocent animals, such as the fawn, and decorates himself with the plumage of harmless birds, such as the dove and hummingbird.

. Sarah Winnemucca

What is life? It is the flash of a firefly in the night. It is the breath of a buffalo in the wintertime. It is the little shadow which runs across the grass and loses itself in the sunset. - Blackfoot

B. WHEN DOES ICWA APPLY?

Indian children involved in state child dependency proceedings are covered by ICWA. A person may define his or her identity as Indian but in order for ICWA to apply, the involved child must be an Indian child as defined by the law. ICWA defines an "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe" (25 U.S.C. § 1903). Under federal law, individual tribes have the right to determine eligibility, membership, or both. However, in order for ICWA to apply, the child must be a member of or eligible for membership in a federally recognized tribe. In the City & County of San Francisco we treat children from Non-Federally recognized tribes in the same manner as those from a Federally recognized tribe. ICWA *does not* apply to divorce proceedings, intra-family disputes, juvenile delinquency proceedings, or cases under tribal court jurisdiction

When handling an ICWA case, Social Workers must do many things, including but not limited to:

- notify the child's tribe(s), parents, and the Indian Custodian(s) of the child custody proceeding;
- Undertake full and complete inquiry;
- provide active efforts to the family;
- identify a placement consistent with ICWA preference provisions (See Appendix C) ;
- and work actively to involve the child's tribe(s) and the child's parents or Indian Custodian in the proceedings. (i.e., Case staffing or mapping, Child Family Team meetings or Permanency Teaming meeting or any decision making meeting regarding the child(ren).

VI. INQUIRY & IDENTIFICATION OF INDIAN CHILDREN

Inquiry for Native American heritage should be done for every family served by the Human Services Agency during initial and on-going contact with all families, particularly when placement is imminent. A child should be identified, at least provisionally, as an "Indian Child" whenever a parent identifies him or herself or the minor as a member of a tribe or when other factors indicate such membership or eligibility for membership. This approach does not require that the ICWA procedures be applied simply because there is a statement that the child may have Indian ancestry. As stated under the Act, "Indian child" status requires that the minor have membership, or eligibility for membership, in an Indian tribe and a biological parent who is a member. Eligibility is determined by that specific tribe.

"We must protect the forests for our children, grandchildren and children yet to be born. We must protect the forests for those who can't speak for themselves such as the birds, animals, fish and trees." - Qwatsinas (Hereditary Chief Edward Moody), Nuxalk Nation

**UNITED STATES CODE TITLE 25 - INDIANS CHAPTER 21 - INDIAN CHILD WELFARE

There is nothing as eloquent as a rattlesnakes tail. - Navajo

A. ROLE OF THE SOCIAL WORKER IN IDENTIFYING AN INDIAN CHILD

1. Inquiry to Family Members

The only way to determine Indian heritage is to ask and investigate, this includes talking with the children. The circumstances that may provide reason to know the child is an Indian child include, but are not limited to the following:

- 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 provides information suggesting the child is a member of a tribe, or eligible for membership in a tribe, or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe;
- b. The residence or domicile of the child, the child's parents, or Indian custodian is in a predominantly Indian community or lived or visited an Indian Reservation or Rancheria;
- c. The child or child's family has received services or benefits from a tribe or services that are available to Indian from tribes or the federal government, such as the American Indian Child Resource Center (AICRC) or the Native American Health Center, cultural events, gatherings or pow-wows.



If there is, reason to believe the child is Indian, investigation should include interviews of parents, extended family members, and tribal representatives regarding a child's Indian status in order to gather the lineage and other information required in **ICWA Form 030**. Probable cause to believe the child may be Indian includes statements regarding Native American heritage from a tribe or Indian organizations, as well as whether the child and/or family received services from Indian service providers. (CRC, Rule 5.481(a)(5).) Remember that the duty of inquiry in ongoing and belongs to everyone social worker from the agency that comes in contact with a family member.

San Francisco Human Services Agency ICWA Social Worker Manual

Because there have been social and historical disincentives for Indian people to self-identify or actively participate in their tribal communities, a client's tribal connection may not be readily apparent or forthcoming. Each parent should be asked about Indian ancestry. When talking with relatives or caretakers, the child's Indian ancestry should also be a standard question.

Questions can be placed in the context that such a background may make the family eligible for special services and provide procedural protections to which they otherwise might not be entitled. The worker should also be alert for other clues regarding Native American ancestry that would prompt further inquiry, e.g., involvement with a Indian health program or other Native American service providers. ER social workers must complete **ICWA Form 010(A)** with every petition that is filed in dependency court.

If Indian background is disclosed, further investigation may be necessary to establish the specific tribal affiliation, if any. **For example**, if the child is Pomo or Miwok, the child's tribe may be from any of several Rancherias, each of which is a separate political entity. The worker's obligation is to specifically identify the tribes and the relatives' membership and/or enrollment information in conjunction with all potential tribes

“Juvenile Court parties should be aware that any person who knowingly falsifies or conceals facts regarding a child's Indian status shall be subject to court sanctions”. (Welf. & Inst. Code § 224.3 (e).) Once a minor is identified as an Indian child, or the social worker has reason to know that the child may be Indian, the obligations will be different depending upon whether a child is or may be removed from his/her family.

- For Voluntary Family Maintenance and Emergency Response Social Workers: it means early inquiry into possible tribal affiliation, interviewing relatives and others to gather the necessary family lineage information, contacting and communicating with the tribal representatives, and making and documenting referrals to Native American providers to try to prevent the breakup of the Indian family. (See pages 6-7, “Inquiry to Family Members”.) There is no prohibition to workers communicating with tribal representatives to discuss possible tribal affiliation and coordination of services in cases where there is reason to believe that an Indian child is involved. In fact, **such communication is required** in cases involving Indian children. (25. U.S.C. § 3205)
- If a child is removed, it has implications for Family Reunification and Permanency Planning

To understand workers the overall implications for notice, collaboration with tribes, identifying culturally appropriate services, and placement requirements of the ICWA child, please see Appendix B

2. Social Worker's Continuing Duty to Identify Indian Children

Inquiry into a child's tribal status is not limited to the beginning of a case. A court finding that ICWA is not applicable does not fully relieve the social worker's ICWA concerns. ICWA eligibility inquiry must be made prior to each hearing.

Remember that your children are not your own, but are lent to you by the Creator. - Mohawk

B. IMPORTANCE OF IDENTIFYING INDIAN CHILDREN

1. ACCESS TO APPROPRIATE PREVENTION AND INTERVENTION SERVICES

Identification of Indian children is not only a legal obligation it is critical in providing effective intervention services to a family. Discovery of a family's Indian background may result in access to free or low-cost culturally-appropriate resources and help create a support network that can truly prevent the breakup of the Indian family. **For example**, Indian identification may lead to finding an extended support system that can be used as a basis for family meetings or help ensure the child's continued safety. It may also provide

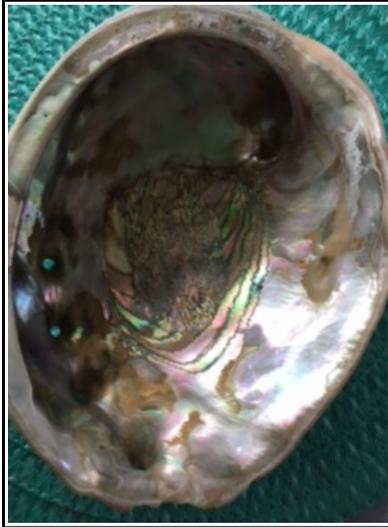


Photo courtesy of Vida Castaneda

important support and self-esteem building opportunities for court dependents and provide a foundation for providing "active efforts" to meet the legal requirement.

2. PLACEMENT WITH INDIAN CUSTODIAN

One important resource under the ICWA is that, in lieu of filing a petition, a child may be placed with an Indian Custodian. An Indian Custodian is an Indian person designated by a tribe or parent who is appropriate for assuming temporary physical care or custody over an Indian child. (25 U.S.C. §1903(6).) The Department may work with a tribe or parent to identify such a person for possible pre-filing or pre-disposition placement to protect an Indian child at high risk of abuse or neglect and such communication is encouraged in cases involving Indian children. This may be particularly useful in situations where a baby

otherwise would be detained following birth at a hospital or for children where there are limited placement options. In exploring this avenue, the worker should seek a formal resolution from the tribe recognizing the person as the child's Indian Custodian and as the preferred placement.

3. ORDER OF PLACEMENT PREFERENCES

Unless there is good cause to the contrary or the child's tribe establishes a different order of preference by resolution, the order of placement preference for Indian children is as follows:

- a) A member of the child's extended family (according to the ICWA "Extended family member" shall be defined by the law or custom of the Indian child's tribe, or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent); or
- A foster home licensed, approved, or specified by the Indian child's tribe;
- b) (tribally-approved home); or
- c) An Indian foster home licensed by an authorized non-Indian licensing authority (tribally- designated home); or
- d) An institution for children approved by an Indian tribe or operated by a Indian organization, which has a program suitable to meet the Indian child's needs.

See PPG 3-5-19 Tribally Approved Homes & ACIN 1-86-08 Tribally Approved Foster Homes

You already possess everything necessary to become great. - Crow

*All things share the
same breath - the
beast, the tree, the
man, the air shares
its spirit with all the
life it supports.
- Chief Seattle*

4. INTER-DEPENDENCE OF DEPARTMENT UNITS TO PROTECT CHILD

The work (and its documentation) by social workers in each Department unit builds a critical foundation for workers in other units, particularly in the event an Indian child must be removed. For example, an Indian child cannot be placed out of home as a dependent if “active efforts” to provide services designed to prevent the breakup of the Indian family were not made. These efforts must include collaboration with the child’s tribe and utilization of available resources, including the child’s extended family, tribal and other Indian social service agencies, and individual Indian caregiver service providers. (Welf. & Inst. Code § 361.7 (a)-(b).) This may require the Social Workers to produce evidence to the court for the disposition hearing that, in prior contacts with the Department, culturally-relevant service referrals were made by Emergency Response (ER) and/or Family Reunification (FR) workers and efforts were made to contact and work with the child’s tribe(s).

All efforts to confirm tribal affiliation including contacts with tribes, interviews with family members and others, should be documented in CWS/CMS and, when a petition is filed, and in court reports. In particular, the court report should detail efforts made to obtain tribal background from family members, the parents’ efforts (or failure) to help provide essential familial contacts, and information inquiries to other sources. In cases where the ICWA may apply, the worker’s obligation is to obtain a written response from each potential tribe and/or the BIA, which confirms or rejects a child’s Indian tribal membership status or eligibility.

The court report should include the date when ICWA notices were sent and, if applicable, the date and substance of the court determination of whether ICWA applies and, if so, which is the Indian child’s tribe(s). Where more than one tribe has an interest in a child, the court report should provide necessary background information for the court to determine with which tribe the child has the most significant contacts. (Welf. & Inst. Code § 224.1 (d) (2).)

5. ENROLLMENT OF CHILD WITH TRIBE

The social worker should pursue with tribal representatives, ICWA Representative, the minor’s attorney, and parents whether a child should become enrolled as a member while a dependent. Generally, it is in the child’s best interest to complete the tribal enrollment process as early as possible. The worker should help identify, and document in the case plan, who will take primary responsibility for complying with tribal membership procedures on the child’s behalf. The social worker should provide coordination and assistance as needed to ensure that the child’s interests in tribal membership are pursued. Each tribe may handle these issues differently, so the social worker should inquire about each tribe’s enrollment process and work with the tribal representative(s). Permanency Planning (PP) and Family Reunification (FR) social workers should ensure that, where possible, tribal enrollment is completed at the earliest possible time and that the court is apprised of the child’s progress toward membership status.

VII. NOTICE

A. PROPER AND TIMELY NOTICE IS REQUIRED

Proper notice is a critical step to ensure ICWA compliance and often is a source of error identified by appellate courts. **LACK OF APPROPRIATE ICWA NOTICE IS THE MOST COMMON REASON THAT DEPENDENCY CASES ARE OVERTURNED OR REMANDED ON APPEAL.** Appropriate notice requires complete and accurate inquiry. Most cases are overturned for a failure to include information which would have been available if full inquiry of all available family members been made. The filing of a dependency petition for a minor whom the Department has “reason to know may be an Indian child” triggers the ICWA notice requirements. Notice of the proceedings and of each subsequent hearing must be made to the parents, Indian Custodian(s), and tribe.

1. SPECIFIC NOTICE REQUIREMENTS

To meet the ICWA notice requirements, ICWA Form 030 must be sent to the relevant tribe(s) and the BIA, as well as separate notices for each subsequent hearing. Notice shall be by personal service or registered or certified mail, return receipt requested to the parent, Indian Custodian, and the tribe(s). (25 U.S.C. §1912; CRC Rule 5.481(b)(1); Welf. & Inst. Code § 224.2(a).) Additional notice by first class mail is also recommended as follows:

- a)** Addressed to the tribal chairperson unless another agent is designated for service. See the Federal Register website for non-local tribal and BIA addresses; [NOTE: be aware that the Federal Register list of tribal contacts and the State website becomes outdated quickly. If the social worker knows of a different address, contact person, notice must be sent to both addresses and worker should call tribe to confirm.];
- b)** To the tribe’s attorney once counsel has appeared in the case;
- c)** all tribes to which the child may be a member; and
- d)** To the BIA in Sacramento if the tribe cannot be determined or located Secretary of the Interior.

Although it is sometimes cumbersome, the forms must be complete, which on the Judicial Council form ICWA-030 includes listing all relatives on both sides even if non-Native American (or documentation in record/court report why information is not available), and each relevant tribe must be appropriately served. This is a critical step in the process as, without effective ICWA notice, the Act’s requirements and purposes cannot be satisfied. County Counsel should be consulted if there is any question regarding notice issues.



*Photo courtesy of the
Native American Health Center-SF Site*

2. NOTICE REQUIREMENTS IF TRIBE UNKNOWN

If the tribal affiliation is unknown, inquiries should be sent to the BIA Pacific Region Office in Sacramento, CA. Tribe and BIA contact information is contained in Appendix for local tribal addresses and/or the Federal Register website for non-local tribal and BIA addresses; (but note that the Federal Register and State contact lists become outdated quickly; it is always advisable to check with the tribe to confirm address/contact person.) Contact all relevant tribes to determine the minor's (and parents') membership status and what services may be available to the Indian child or family. If a dependency petition is filed, the notice of proceedings requirements that must be followed are discussed below. A determination by a tribe that a child is, or is not a member, or eligible for membership is conclusive. (Welf. & Inst. Code § 224.3 (e).)

3. NOTICE REQUIREMENTS IF THERE MAY BE MORE THAN ONE TRIBAL AFFILIATION

If a child is or may be eligible for membership in more than one tribe, the "ICWA tribe" will be determined by the court as the tribe with which the child has the most "significant contacts." (25 U.S.C. §1903(5).) In determining which tribe has the most significant contacts, the court will consider, among other things, a) residency on the reservation; b) frequency of contact with each tribe; c) the interests asserted by the respective tribes to the court; and d) the child's self-identification. (Welf. & Inst. Code § 224.1 (d) (2).) Information on these points should be included in the court report. The worker should pursue identification (and notice) of all tribes with which the child is or may be affiliated until the court determines which will be the ICWA tribe for purposes of the dependency proceedings.

B. ROLE OF WORKERS IN PROVIDING NOTICE

1. VOLUNTARY FAMILY MAINTENANCE/EMERGENCY RESPONSE RESPONSIBILITIES

The units working with families and responding to reports of child abuse and neglect prior to the filing of a petition generally will not be required to provide notice unless a worker is assisting in filing a petition and performing the initial removal investigation. However, social workers must contact any known tribes and active efforts to prevent removal are essential and must be documented.



Photo courtesy of the Native American Health Center-SF site

When a man moves away from nature his heart becomes hard. - Lakota

All things in the world are two. In our minds we are two, good and evil. With our eyes we see two things, things that are fair and things that are ugly.... We have the right hand that strikes and makes for evil, and we have the left hand full of kindness, near the heart. One foot may lead us to an evil way, the other foot may lead us to a good. So are all things two, all two.

- Chief White Eagle of the Pawnee

2. ER SOCIAL WORKER AND STAFF RESPONSIBILITIES

The initial notice requirement will usually be the responsibility of the Emergency Response units that performs the initial investigation and gathers information for the petition and detention hearing.

The ICWA 030 notifies the child's tribe of child welfare involvement in the life of an Indian child. It also requests the tribe's determination of membership by the tribal representative. **The court cannot proceed in a case until 10 days after receipt of notice by the tribe(s) and BIA, so it is critical that the notice be sent out as soon after the detention hearing as possible.** The ER Social Worker must interview all known extended family members and contact the Tribe(s) or ICWA worker of the tribe(s) as soon as it is known that the child is or may be an Indian child to engage in joint case planning and make appropriate referrals for the family. At detention, ask the court to order that "The Department shall have permission to share case information with a qualified expert witness and the ICWA representative designated by the tribe(s). The parent shall comply with providing the Department all known information on relatives."

3. FAMILY REUNIFICATION RESPONSIBILITIES

When the possibility of Indian ancestry is raised following the disposition hearing, the FR worker will be responsible for investigating tribal affiliation and ensuring that the proper tribal contact is located and notified of proceedings. As the tribe is required to be properly noticed of each hearing, the FR worker will be responsible for ensuring that notices are timely sent throughout the reunification process even if the initial contacts were made by the ER Social Worker. It generally will be the responsibility of the FR worker to follow-up and ensure that written confirmation is received from each contacted tribe (and/or BIA) to confirm or deny a child or parent's membership status and to ensure court determination of ICWA status. If proper ICWA notice was provided by the Department, and neither a tribe nor the BIA has provided a determinative response within 60 days after receiving the notice, the Department must ask the court to determine whether ICWA applies. (Welf. & Inst. Code § 224.3 (e) (3).)

4. PERMANENCY PLANNING RESPONSIBILITIES

When the possibility of Indian ancestry is raised following termination of reunification services, the PP worker will be responsible to complete the form ICWA-030, locate the appropriate tribal representatives, and provide notice of the proceedings, documenting all efforts and contacts made regarding ICWA compliance. (See steps noted earlier) If the court determines that the ICWA applies, the PP worker will be responsible for ensuring that timely notices are sent to a designated tribe throughout the life of the dependency, even if the initial contacts were made by another unit.



Abalone, sage & sweetgrass braid photo courtesy of the Native American Health Center-SF Site

It is easy to be brave from a distance. - Omaha

VIII. ACTIVE EFFORTS

Any party seeking to effect a foster care placement of an Indian child has the burden to demonstrate that “active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful.” (25 U.S.C. §1912(d).) Actions to provide active efforts “must include... attempts to use the available resources of extended family members, the tribe, tribal and other Indian social service agencies, and individual Indian care givers.” (Cal. Rules of Court, Rule 5.484(c)(2); Welf. & Inst. Code § 361.7 (a)-(b).) A cornerstone in the application of active efforts is active and early participation and consultation with the child’s tribe in all case-planning decisions. Active efforts shall be delivered in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe. Active efforts shall be assessed on a case-by-case basis.



*Photo courtesy of the
Native American Health Center-SF Site*

A. ACTIVE EFFORTS DEFINED

On a practical level, what “active efforts” means is that any time a worker has reason to know that a minor may be an Indian child, **every effort must be made to arrange culturally-appropriate services to the family**. Services are available through Indian service providers. In addition, coordination by the social worker of efforts by extended family members and the tribe to assist the family (e.g., facilitate visitation or assist in housing) also constitute active efforts. Identifying appropriate services will often be accomplished by engagement & collaboration between the social worker and the tribe’s ICWA advocate, who should be a primary contact involved and consulted at each stage of the proceedings.

It is critical that the parents, Native American custodian(s) and tribal ICWA advocate are actively involved in the development of the case plan. In addition, resources of family members, tribal programs, and traditional Native American services such as healing circles should be explored with agency and/or tribal representatives. Indian service referrals should be made **and documented** for both parents, even if one is non- Native American, or if they do not have any connection to their tribe or Indian heritage. Alternatively, non- Native American referrals should be provided if requested by the parent. The child should also be provided opportunities to engage in Native American programs, services, and events as part of the Department’s active efforts and child’s case plan.

B. ROLE OF WORKERS IN PROVIDING ACTIVE EFFORTS

- 1. Voluntary Family Maintenance Responsibilities** - If the worker has reason to know an Indian child may be involved; the family should be referred to tribal and local Native American service providers prior to any potential removal of the child. A tribe should be identified by the steps outlined above but, at a minimum, the worker should attempt to identify tribal resources through a tribe's ICWA advocate and families should be directed to appropriate services. All referrals must be documented in CWS/CMS.
- 2. ER Social Worker Responsibilities** - Immediately upon filing the petition, the parents should be referred or re-referred to Native American service providers. The court report must contain an ICWA section and include all referrals that were provided to the parents by ER, including help solicited from extended family members. In addition, the initial case plan and court report should specifically state that, whenever possible, services shall be provided by Native American programs and describe what contact and involvement has been solicited from the tribe's ICWA worker.
- 3. Family Reunification and Court-Ordered Family Maintenance Responsibilities** - The worker should coordinate culturally relevant services for the parents and the child and follow up with Native American service providers and tribal representatives throughout the reunification/family maintenance/PPLA period. Child welfare social workers have a continuing duty to determine if a dependent has Indian heritage. If it is discovered for the first time during reunification that there is reason to know that an Indian Child may be involved, appropriate notice must be given and the case plan should be modified to state expressly that Indian service providers shall be utilized whenever possible and to make new referrals to Native American service programs. Sometimes it may be beneficial to make joint referrals, e.g., for parenting classes both to the Native American Parenting class so parents can choose what schedule and program best meets their needs. Native American resources may be available to assist with transportation for and supervision of visits. Culturally-sensitive programs should be investigated and accessed in local or state correctional facilities whenever a parent becomes incarcerated. The child's case plan should ensure that the minor is provided opportunities to participate in Native American -based programs and tribal/ Native American community events while in placement. All referrals, Native American services utilized child's involvement in Native American programs, and work with extended family members and ICWA advocates should be documented in CWS/CMS and court reports.

Children were encouraged to develop strict discipline and a high regard for sharing. When a girl picked her first berries and dug her first roots, they were given away to an elder so she would share her future success. When a child carried water for the home, an elder would give compliments, pretending to taste meat in water carried by a boy or berries in that of a girl. The child was encouraged not to be lazy and to grow straight like a sapling.

*Mourning Dove Salish
1888-1936*

Man has responsibility, not power. - Tuscarora

4. Permanency Planning Responsibilities – Workers should be in contact with tribal representatives and ensure that the child is being offered the opportunity to engage in relevant Native American -based programs and tribal/ Native American community events. If a parent is offered additional reunification services after a permanent plan is established, referrals should be provided to Native American -based programs and resources. All Native American-related activities and referrals should be documented in CWS/CMS and court reports.

Genealogy

The genealogist for our county works to engage, enroll and connect the child/youth who is ICWA eligible and in the child welfare system. The genealogist connects to the child's/youth's tribal community, whether from a federally recognized tribe or non-federally recognized tribe. The genealogist can also be a coach to staff around the completion of the ICWA 030 and can provide guidance for deep inquiry. Please inquire with your supervisor for further information.

THE FOLLOWING ARE SUGGESTED BEST PRACTICE GUIDELINES FOR PROVIDING ACTIVE EFFORTS:

HSA ICWA ACTIVE EFFORTS PRINCIPLES

- A. The cornerstone of active efforts is active and early participation and consultation with the child's tribe in all case planning decisions. Each tribe has its own expectations for active efforts. The facts of each case dictate the level of active efforts required.
- B. HSA should inquire about the applicability of the Indian Child Welfare Act immediately upon a child being taken into protective custody. These efforts must be documented. If the information is not available at that time, on-going inquiries need to be made as the case progresses and more information becomes available.

"Out of the Indian approach to life there came a great freedom, an intense and absorbing respect for life, enriching faith in a Supreme Power, and principles of truth, honesty, generosity, equity, and brotherhood as a guide to mundane relations."

Luther Standing Bear, Oglala Sioux Chief

C. Active efforts cannot be excused under state law definitions for aggravated circumstances or extreme conduct. The health and safety of the child are of paramount concern in every case. In some cases, the return of the child to the biological parent or Indian custodian may result in serious physical or emotional damage to the child. However, every case must receive active efforts, which should include at a minimum, a diligent assessment of the reasons for removal of the child, the risk for further harm of the child, and the ability of the parent or Indian custodian to safely care for the child. Consultation with the Indian child's tribe is critical to determining what and how active efforts should be provided.

D. Active efforts determinations apply to the entire time period covered by the Court's review. HSA is obligated to make active efforts throughout the review period or until the plan changes to something other than return to parent. Findings will be made based on the timeliness and appropriateness of the services offered. This active efforts finding may be made for any part of a review period in which the goal is Return to Parent.

E. In all ICWA cases, prior to the adjudication of the petition, HSA is obligated to provide active efforts to offer services to make it possible for the child to safely return home. The parents' or Indian custodians' obligation to participate begins when the court makes a finding on the allegations of abuse/neglect and takes jurisdiction. For example, if an adjudication of a petition is delayed because a criminal matter is pending, HSA has the obligation to offer services to the parents or Indian custodians even though the parents or Indian custodians may choose not to engage in services. When parents or Indian custodians agree to participate in services prior to adjudication of the petition, an active effort finding will be based on the services provided. When the parents or Indian custodians refuse to participate prior to adjudication, the active efforts finding will be based on the offer of services. Consultation with the Tribe is important in these circumstances. Efforts to engage the child's tribe should be documented.

F. If HSA has made the effort to provide a service and another person or entity has not fulfilled their responsibility to provide the services, the active efforts finding should be made based on HSA's effort to provide the service in a more creative manner. For example, if HSA has referred a parent or Indian custodian to parent training and a waiting list has kept the parents or Indian custodian out of the class, HSA, in spite of the failure of the other person or entity, should make active efforts to find another class, contract with a provider to make the service available, or use some other effective method to make the service available to the parents or Indian custodian.

G. Utilizing Child Family Team meetings (CFT), or other culturally-relevant approaches, for case planning creates unique family specific service plans. These plans often specify certain tasks to be done by family members. If those tasks directly affect the reunification and a family member has not completed the task, HSA will actively assist and support the family in completing the task and document all efforts to do so.

H. Given that a child's health and safety are the paramount concerns, HSA has an obligation, in consultation with the child's tribe, to offer relevant services to all members of the household who will have responsibility to provide care for the child even if the person does not have legal rights to the child. If any household member refuses to participate in services offered the active efforts finding will be made on the offer of services. The child's tribe should be kept informed of the status of the case on an ongoing basis regardless of whether the child's tribe chooses to intervene or not.

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I. In making active efforts to reunify families, if services needed are not readily accessible, DSS will make active efforts to develop, modify, and coordinate services that will address the conditions and circumstances that are the bases for juvenile court jurisdiction. Access to cultural and tribal services and frequent face-to-face contact between the worker and the child and family needs to occur.

J. Documentation of all casework activity is important. While this document specifically mentions documentation in certain areas, the best course of action is to document all casework done to achieve a positive active efforts finding.

The hearts of little children are pure, and therefore, the Great Spirit may show to them many things which older people miss." -

BEIk (Hehaka Sapa) OGLALA LAKOTA

Children/Youth Who Are AWOL

Children/youth who are AWOL and ICWA eligible, designated ICWA or of tribal descent, it is important that you contact their tribe when the child/youth goes missing AND when returns, in addition to law enforcement. The tribes often maintain their own data records, may be working together with Sovereign Bodies Institute to update data and/or can assist in locating the child/youth. Sovereign Bodies Institute (SBI) is an organization that builds on Indigenous traditions of data gathering and knowledge transfer to create, disseminate, and put into action research on gender and sexual violence against Indigenous people. Many tribes and tribal families are now working in partnership with Sovereign Bodies Institute to maintain data records on missing persons regardless of age. SBI also maintains data for Indigenous missing persons throughout this continent, regardless of borders. If a child is ICWA eligible or designated ICWA, you must contact the tribe when a child/youth is AWOL and returns as part of active efforts.

IX. PLACEMENT PREFERENCES

To accomplish the ICWA's goal of maintaining Indian children within the tribal community, the Act relies upon the statutory placement preferences. Separate placement preferences exist depending on whether the placement is for foster care or adoption. (Welf. & Inst. Code § 361.31.) Every time an Indian child is removed from a parent or Indian Custodian or moved from one placement to another, the ICWA foster care placement preferences listed below must be followed. (25 U.S.C. §1915(b); Welf. & Inst. Code § 361.31.) Diligent active efforts must be demonstrated to show that the highest preference possible is utilized, in reasonable proximity to the child's home, in the least restrictive setting possible, and consistent with the tribe's prevailing social and cultural standards. In addition, the law compels collaborative work with the tribe to find an appropriate placement by requiring that child welfare workers use tribes and tribal services and agencies, when available, to fulfill the placement priorities. (Welf. & Inst. Code § 361.31 (g).)

A man must make his own arrows. - Winnebago

A. FOSTER CARE

When an Indian child who is a member of or eligible for membership in an Indian tribe is detained, the social worker shall make every effort to place the child in an ICWA-compliant home.

When looking at continued placement, Indian children should be placed in the least restrictive setting resembling a family situation in which the child's special needs can be met and is within reasonable proximity to the child's home. The social worker should use the services of the Indian child's tribe to secure placement in an ICWA compliant home.

1. Order of placement preferences (cited from Federal ICWA Code)

Unless there is good cause to the contrary or the child's tribe establishes a different order of preference by resolution, the order of placement preference for Indian children is as follows:

- a) A member of the child's extended family (according to the ICWA "Extended family member" shall be defined by the law or custom of the Indian child's tribe, or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent); or
- b) A foster home licensed, approved, or specified by the Indian child's tribe (tribally-approved home); or
- c) An Indian foster home licensed by an authorized non-Indian licensing authority (tribally-designated home); or
- d) 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.

2. Modification of Priorities (cited from WIC)

a. Tribal Modification of Statutory Placement Preferences

The law or custom of a tribe can be used to expand or modify the priorities. If a tribe, through resolution, establishes a different placement preference order, the court and agency effecting the placement are subject to the modified placement priorities. (Welf. & Inst. Code § 361.31 (d).)

b. Court Finding of "Good Cause" to Modify the Preferences

If a tribe, through formal resolution, does not specify that a particular non-preferential placement is approved, the worker must demonstrate that:

- 1) active efforts were made to place the child with a family committed to enabling the child to have extended family visitation and participation in Indian tribal/community cultural events; and
- 2) that "good cause" exists for modifying the preferences. (Welf. & Inst. Code § 361.31 (h)-(j).) The "good cause" finding must be documented in the court report and adopted by the court.



Photo courtesy of Vida Castaneda

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To establish good cause, one of the following must be demonstrated and presented to the court:

- i) A diligent search failed to locate a suitable Indian home and such a search included inquiry to the tribe, extended family, Indian /tribal service agencies, county and state listings of available Indian homes, and Indian licensing and placement agencies. An Indian child may be placed in a non-Indian home only if the court makes a finding that a “diligent” search has failed to find an Indian home. (BIA Guidelines for State Courts, 44 Fed. Reg. 67584(F3); Cal. Rules of Court, rule 5.484(b); or
- ii) The request of a biological parent and the preferences and wishes of the Indian child, when of sufficient age, have been considered, including the request of a parent for anonymity; or
- iii) The child’s special needs for a placement, which offers either proximity to a parent or a therapeutic program, when no available preferred placement can meet these needs.

3. **TRIBALLY- APPROVED HOME** (PPG: 3-5-19 Tribally Approved Foster Homes)

A tribally-approved home is a home approved by the child’s tribe. The ICWA authorizes Indian tribes and tribal organizations to establish and operate child and family services programs, including a system for licensing or otherwise regulating Indian foster and adoptive homes. If a tribe chooses to do so, it can establish a process/set of standards for licensing, certifying, or approving homes for placement of their children. Homes that complete this process and are approved by the tribe would be considered a tribally-approved home. The approval document could be a tribal resolution or another form approved by the tribe. The relative or non-related extended family member approval standards required by Adoptions and Safe Families Act and AB 1695 are not to be applied to tribally-approved homes.

Prior to placing a child in a tribally-approved home, the ICWA advocate must provide to the social worker a resolution from the tribe designating the home as tribally approved after a criminal records check on all individuals residing in the home age eighteen and over had been completed. If the criminal records check indicates that an individual has been convicted of a crime, a child may not be placed in the home unless a criminal records exemption is granted. Welfare & Institutions Code Section 361.4 permits a tribe to request an exemption from either the State of California or the county to allow placement into a home approved by a tribe. The department must also check the CWS/CMS and Child Abuse Central Index (CACI) for any hits involving the proposed caregiver, or others residing in the home. If hits are found, the social worker and ICWA advocate must assess the home to determine the suitability of the proposed caregiver/placement.

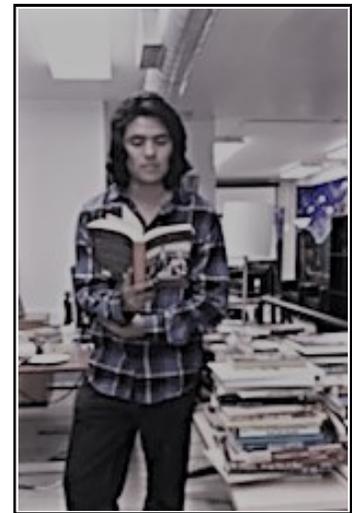


Photo courtesy of the Native American Health Center-SF site

It is better to have less thunder in the mouth and more lightning in the hand. - Apache

4. TRIBALLY- DESIGNATED HOME

A tribally-designated home is a home not formally approved or licensed by the child's tribe but designated as a potential placement home. In this case, the Department is responsible for approving the home and completing the SOC 815, 817 and 818 forms, or the home must be licensed. Social workers should work with tribes and recognize the tribes' process to identify tribally-designated homes.

B. ADOPTIVE PLACEMENT

The question of adoption of Indian children is a very sensitive issue to most Indian tribes. Many tribes view adoption as contrary to deeply-held beliefs, damaging to the child and the tribe, and laden with the terrible history of past treatment of tribal families. The City & County of San Francisco respects tribal customs and beliefs and, in most cases, does not oppose a tribe's request not to have their tribe's member child legally adopted, but instead to develop another permanent plan. However, effective July 1, 2010, California recognizes "tribal customary adoption", which is adoption by and through the tribal custom, traditions, or law of an Indian child's tribe. The tribe shall approve of any TCA. Termination of parental rights is not required for tribal customary adoption. (AB 1325; Welf. & Inst. Code § 366.24.) Pursuant to this new provision, "whenever an assessment is ordered pursuant to 361.5, 366.21, 366.22, 366.25 or 366.26 for Indian children, the assessment shall address the option of tribal customary adoption." (Welf. & Inst. Code § 366.24(b).)

Early consultation between the tribe and agency is critical to identify appropriate placements and to explore what can be done to work through issues around permanence and/or to find creative solutions. Tribal customary adoption is now a recognized alternative to termination of parental rights for Indian children that must be considered. Any agreement on a permanent plan should be reflected in a tribal resolution that is filed with the court.

As discussed below, specific placement preferences apply to adoption and Welfare and Institutions Code section 366.26 now includes a specific exception to the termination of parental rights of Indian children in certain circumstances.

1. ADOPTION PLACEMENT PREFERENCES

Separate placement preferences apply in the case of an adoptive placement. The required ICWA placement priority for adoption, and preferred for other permanent placements, are as follows:

- a. A member of the child's extended family; or
- b. Other members of the child's tribe; or
- c. Other Indian families

(25 U.S.C. §1915(a).) As stated above, a child's tribe can establish a different order or preference or approve a specific placement by resolution. Efforts to enlist the tribe's assistance in placement and good cause not to follow the above order of preference must be established as discussed above (section VIII.A.2) and documented in the court report.



Photo courtesy of the Native American Health Center-SF site

"Except for Native Americans, everyone else is an immigrant." Vickie Whitewolf

2. ICWA ADOPTION EXCEPTION

Recent legislative amendments have created a new exception to termination of parental rights for Indian children who may otherwise be adoptable. (**Welf. & Inst. Code § 366.26 (c)(1)(B)(vi).**)

This exception applies when the court finds there is a compelling reason for determining that termination of parental rights would not be in the best interests of the child based on the following:

- a. Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights; or
- b. The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another living arrangement as the appropriate permanent plan for the child.

However, when appropriate, the placement preferences of the child and parent shall also be considered. An exception to adoption also exists for Indian children six years or older who are living with an Native American Custodian or extended family member when removal of the child would be detrimental to their emotional well-being. (Welf. & Inst. Code §366.26(c)(1)(B)(iv))

RFA

Resource Family Approval (RFA) is the process by which all resource family homes, formerly known as foster homes, are approved in the state of California. For ICWA cases the standards of RFA only apply in certain circumstances.

There are three possibilities for approval of ICWA resource family homes:

Tribal approved homes

Tribal specified homes

Resource Family Approval of a ICWA family resource home.

*If there is an ICWA family home that is not tribally approved or specified then the home must complete the county resource family approval process.

C. ICWA PLACEMENT ADVANTAGES

Finding Indian foster homes is often difficult. The Act provides important benefits when working closely with tribal representatives in finding a placement. Perhaps the greatest advantage is that the Act allows for the placement of Indian children with families (and creates foster care payment eligibility) for people who might not have otherwise been authorized to care for the child. (See section IV.B.2 (pre-dispositional placement with "Indian Custodian.")) Under the law, placements made "pursuant to the Act" are eligible to receive foster care payments. These placements include any home of a relative or non-relative which is approved, or specified by the Indian child's tribe. (Welf. & Inst. Code § 11401; All County Information Notice No.1-86-08, November 20, 2008.)

Working closely with tribal representatives in conducting a placement search has other advantages. Local tribes are particularly important resources in identifying relatives or Indian families who are interested in caring for court dependents and, under California law, must be consulted as part of the placement search.

In addition, the ICWA designee should be part of the placement team, and, if diligent and active efforts are still unsuccessful in finding an ICWA compliant placement, an appropriate non-Indian family who is committed to keeping a child connected to his or her Indian heritage shall be the next alternative. (Welf. & Inst. Code § 361.31(i).) **Under ICWA, the tribe can, by resolution, change the placement preferences or unilaterally determine that a tribally-approved placement complies with the Act.**

A tribal resolution supporting a placement may help avoid disputes and demonstrate that the ICWA legal requirements were met. If there is reason to believe that the placement would not be a safe one, the county placement worker shall discuss the concern(s) with the tribe and allow for possible correction of the issue(s) of concern. The tribe may also contact the social worker to voice its concern for the child's safety in placement. However, approval requirements (e.g., the size of the home, the number of individuals residing in the home, whether more than two children share a bedroom) are not to be used as rationale for not placing an Indian child in a tribally-approved home. Ultimately, the final placement decision and responsibility is with the county child welfare services agency for determining the appropriateness of an Indian child placement. The social worker must document all active efforts made to comply with the order of placement preference for Indian children in CWS/CMS – Contact Note/Delivered Service Log and in the court report under the “Relative Placement Concurrent Planning” section.

It is important to remember that even when parental rights have been terminated, ICWA applies and requires compliance with placement preference. The removal of an Indian child from his/her family and placement in a foster or adoptive home shall be consistent with the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or maintains social and cultural ties.

X. QUALIFIED EXPERT WITNESS

The ICWA requires the testimony of a qualified expert witness when recommending foster care placement or termination of parental rights in an Indian child custody proceeding. The expert witness must testify on the issue of whether continued custody by the parents or Indian custodian is likely to result in serious physical or emotional damage to the child. In addition, the court “shall consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including the tribe's family organization and child-rearing practices.” Welfare & Institutions Code Section 224.6(b)(2). The court may accept a declaration or affidavit from a qualified expert witness in lieu of testimony only if the parties involved have so stipulated in writing and the court is satisfied the agreement was made knowingly, intelligently, and voluntarily. (Welf. and Inst. Code section 224.6.)

A qualified expert witness may include, but is not limited to, a social worker (a qualified expert witness cannot be a City & County HSA employee when the Department is the party seeking the removal or termination of parental rights), sociologist, physician, psychologist, traditional tribal therapist or healer, tribal spiritual leader, tribal historian, or tribal elder or other persons so designated by the tribe.



Photo courtesy of the Native American Health Center-SF site

San Francisco Human Services Agency ICWA Social Worker Manual

Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of an Indian child custody proceeding:

1. A member of the Indian 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;
2. Any 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 within the Indian child's tribe;
3. A professional person having substantial education and experience in the area of his or her specialty.

The expert witness must consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including the tribe's family organization and child-rearing practices and must be prepared to provide information to the court. It is critical that the social worker consult with the child's tribe to identify an expert witness. Once the declaration has been received from the expert witness, a copy must be sent to County Counsel to review prior to the hearing with the social worker. County Counsel will contact the expert witness and prepare them for trial. (ACIN 1-40-10 Requirement of the use of an expert witness by the Indian Child Welfare Act - ICWA)

HSA Staff Expectations:

- First contact the child's tribe about who they would like as an expert witness (see FR PPG for full procedure).
- Once an expert witness is chosen, provide them with discovery, reports, etc. that would be provided to the attorneys. Also advise how to contact the family and tribe, if needed.
- Advise expert witness of the Court hearing and offer to send any written report as an attachment to the SFHSA Court report or discovery.
- If advised that the testimony will not be ready for the Court hearing, indicate this on the 6141/ advise Court Officer.

SFHSA Expectations of Expert Witness:

- If the expert witness has one, provide their resume/VITA.
- If the expert witness does not have a resume/VITA, explain to SFHSA SW what qualifies them as an expert witness (i.e. they are a tribal elder, are a member of the tribe and have children of their own, etc.)
- Research for their testimony needs to include contact with the child(ren), parent(s), assigned SFHSA SW, and child's tribe (if they are not already a member of the tribe). When possible, contact needs to be face to face.

- Advise SFHSA SW whether their testimony will be oral and/or in writing. If in writing, expert witness will be given the opportunity to provide report to SFHSA SW, who will attach it to the Court report and/or send in discovery.
- If testimony will not be ready for the Court hearing, advise the SFHSA SW at least two working days before the hearing of the reason why and when the testimony will be ready.

A. DISPOSITION HEARING

At the Disposition Hearing, if the Department is recommending that an Indian child remain in out-of-home care, the court report must document what active efforts have been made to keep the Indian family together. At that hearing, unless waived (see below), a qualified expert witness must provide testimony that demonstrates, by clear and convincing evidence, that continued custody of the child by the parent or Indian Custodian is likely to result in serious emotional or physical damage to the child. In addition, the expert must discuss the prevailing social and cultural standards of the Indian child's tribe, including the tribe's family organization and child-rearing practices. The expert's report, which should be received prior to the hearing, should be summarized in the disposition report and attached to the court report.

B. TERMINATION OF PARENTAL RIGHTS

Every effort shall be made to utilize the same expert witness as in the Disposition hearing. Prior to termination of parental rights at the section 366.26 hearing, the qualified expert must provide evidence that demonstrates, beyond a reasonable doubt, that continued custody by a parent or Indian Custodian is likely to result in serious physical or emotional damage to the child and the expert must discuss the social and cultural standards of the child's tribe. If the expert's report is received prior to the 366.26 hearing, it should be summarized in the report and attached to the report for all parties. If the prospective adoptive home is a non-Indian, the social worker must document in the court report how the prospective adoptive parent is committed to enabling the child to participate in the cultural and ceremonial events of the child's tribe. If the Indian child is already in the prospective adoptive home, document in the court report how the caretaker has demonstrated this commitment by discussing family visits and participation in cultural and ceremonial events of the child's tribe.

C. WAIVER OF QUALIFIED EXPERT

A waiver of the requirement for expert testimony can be made by the tribe and the parents if the court finds that it is knowing, intelligent and voluntary. Cal. Rule of Ct., rule 5.484(a) (2). Such a waiver stipulation should be made in writing by all parties and filed with the court. When the removal of a child is done on an emergency basis, it is recommended that the social worker obtain a stipulation from the tribe regarding the need for removal at that time.

XI. COURT

A. Court Reports

The court report is the social worker's primary mechanism to communicate to the judge, the tribe, the parties, and the attorneys that the mandates of ICWA were followed. Due to the unique evidentiary status of social worker's court reports, the importance of a complete accounting of ICWA efforts cannot be overemphasized. As discussed in the relevant sections above, each court report should contain an ICWA section that, at a minimum, describes the date and outcome of the court's ICWA determination. When ICWA does apply, the section should discuss the current status of collaboration with the tribe on "active efforts" and placement, as well as the contact with the tribe's ICWA designee.

B. Invalidation

If ICWA notice is not proper, active efforts were not provided, or there was not a qualified ICWA expert witness or waiver thereof, any Indian child, parent, Indian custodian, or tribe may petition the court to invalidate the proceedings. Invalidation is the legal remedy for these violations of ICWA.



*Photo courtesy of the
Native American Health Center-SF site*

XII. THE DEPARTMENT'S ONGOING DUTIES UNDER ICWA

Complete the following as applicable:

1. Check the Client Notebook in the Child Welfare Services/Case Management System (CWS/CMS) for information on the child's Indian status;
2. Ask the parent/legal guardian/Indian custodian and/or child if they are Indian, if not previously done. **Social worker must complete and attach Form ICWA - 010 to the petition when filed;**
 - a) Request that the parent/legal guardian/Indian custodian complete a *Parental Notification of Indian Status (Form ICWA-020)*;
 - b) Contact extended family members and Indian custodian to gather the information needed to complete the **Notice of Involuntary Child Custody Proceedings for an Indian Child (Form ICWA- 030)**.
Do not leave any spaces blank on the ICWA-030 and do not put N/A if the information is not known. If unknown, write in the applicable space "no information available" or "see additional information below." Then, in the Additional Information Box, list the names of the individuals interviewed.
 - c) Document the name and relationship of the person providing the information and their response in the Contact Notebook and Client Notebook under **ICWA 030** page, and complete the Ancestor Information.
 - d) If necessary, contact the BIA (or the State Department of Social Services) Federal Register Link for federally-recognized tribes and designated agent for service <http://www.loc.gov/catdir/cpsol/biaind.pdf> for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership.
3. Add new tribal information for a child of Indian ancestry in CWS/CMS by first completing the **ICWA 030** page in a parent's notebook. After completing the parental information, all the child's Tribal Membership fields will display the parent's information, except the Membership Status, Status Date, and Enrollment Number fields, which need to be completed in the child's Client Notebook, if provided by the parent or tribe.
4. Code the child as "claims membership" or "pending verification" on the ID page of the Client Notebook on CWS/CMS, as appropriate.
5. Document all active efforts provided to the Indian family to prevent the breakup of the family and explain whether or not such efforts were successful in the Contact Notebook, Case Plan, and/or Court Report.
6. The Form ICWA-030, a copy of the dependency petition and a copy of the child's birth certificate, if available, shall be mailed to the following parties by Certified Mail-Return Receipt Requested, at least 10 days prior to the next hearing:
 - a) Tribe(s) – addressed to the named tribal chairperson, unless the tribe has designated another agent for service. The named tribal chairperson or agent is listed in the Federal Register and is required to be used. Notice shall be addressed to the name of the designated tribal representative and must be sent to all tribes of which the child may be a member or eligible for membership. Notice must be sent to the address located under the federal register: <http://www.bia.gov> .The federal register is listed under *Department of the Interior, Bureau of Indian Affairs-Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice*.

b) Bureau of Indian Affairs (BIA)

**Pacific Regional Director
Federal Office Building
2800 Cottage Way
Sacramento, CA 95825**

c) Secretary of the Interior (required when the identify or location of the parents, Indian custodians or the minor's tribe is known)

**US Department of the Interior
1849 "C" Street, N.W.
Washington, D.C. 20240**

d) Parents/Guardians;

e) Indian Custodian (if any).

7. If proper and adequate notice has been provided, and neither a tribe nor the BIA has provided a determinative response within 60 days after receiving that notice, and the return receipt was received signed by the properly named and designated tribal representative, the court may determine that the ICWA does not apply.
8. Update new information received from the tribe(s) or the BIA in the Client Notebook on CWS/CMS.
9. Code the child as "eligible", "member", or "not eligible" on the ICWA page of the child's Client Notebook on CWS/CMS once the Letter(s) of Confirmation is/are received from the tribe(s).
10. File all responses from tribes and/or the BIA and proofs of service with the court with all return receipts attached; provide copies of all documents filed with the court to city attorney and all attorneys of record.
11. Discuss all the pertinent information on the child's Indian status in the court report and attach the following documents to the court report (the documents must be filed in the court prior to the hearing)
12. Continue to provide notice of Indian child dependency proceedings to possible tribes, until:
 - a. Court finds notice proper; **or**
 - b. The tribe acknowledges in writing that the child is not a member and is not eligible for membership and the court determines ICWA does not apply; **or**
 - c. It has been more than 60 days since the tribe received the notice and the court determines ICWA does not apply; **or**
 - d. The tribe intervenes; **or**
 - e. The tribe acknowledges in writing that the child is a member of the tribe or is eligible. When a federally-recognized tribe confirms that a child is Indian, the tribe must be noticed for all subsequent hearings regarding the Indian child.
 - f. Review each minute order and findings and orders for one or more of the following findings required for Indian cases:
 - Notice has been provided to all required parties;
 - Based on the child's Indian status and the child's tribal membership, either ICWA applies or ICWA does not apply;
 - When the Court has made the finding that ICWA does or does not apply, code the child as "eligible", "member", or "not eligible" on the ID page of the child's Client Notebook on CWS/CMS;

XIII. San Francisco Specific Resources & Links

American Indian Child Resource Center (AICRC)

522 Grand Avenue
Oakland, CA 94610
(510)208-1870
Fax:(510)208-1878
<http://aicrc.org/>
<https://www.facebook.com/AICRC> <https://www.facebook.com/nativeyouth510>

Casey Family Programs-Bay Area Field Office

491 9th Street
Oakland, CA 94607-4047
(510)444-4025
Fax: (510)444-4095
<http://www.casey.org/bay-area/>

Friendship House Association of American Indians Inc., of San Francisco

56 Julian Avenue
San Francisco, CA 94103-3507
(415)865-0964
Fax: (415)865-5428
[http://www.friendshiphousesf.org/Program Admission](http://www.friendshiphousesf.org/ProgramAdmission)

***Arizona Intake/Outreach Program**

Contact Gordon: 505-870-6098
Leave a message on voicemail

***San Francisco Residential and Oakland Lodge Program**

Contact April: (415)865-0964
Monday-Friday 9am-4pm

***Youth Program, After School Program & Substance Abuse Prevention**

Contact Duane: (415)796-3569
Physical Address:
474 Valencia Street, Suite #235
San Francisco, CA 94103

Intertribal Friendship House (IFH) 523

International Blvd,
Oakland, CA 94606
(510)836-1955
<http://www.ifhurbanrez.org/>

Native American Health Center- San Francisco

160 Capp St.
San Francisco, CA 94110
Medical: (415)621-8051
Medical Fax Number: (415)621-3985
Dental: (415)621-8056
Circle of Healing/HIV Service: (415)621-8054
WIC: (415)621-7574 (1st Monday and 3rd Thursday of the month, 9am-1pm and 2-5pm)
<http://www.nativehealth.org/content/san-francisco-0>

San Francisco Department of Public Health Mission Family Center Children, Youth & Families System of Care , Community Behavioral Health Services

759 S. Van Ness Avenue
San Francisco, CA 94110
(415)642-4571
Fax:(415)695-6963

San Francisco Community Wellness Department-Native American Health Center

333 Valencia St.
San Francisco, CA 94103
Behaviorial Health Services (2nd floor):
(415)503-1046
Youth Services (4th floor): (415)863-2430

San Francisco Unified School District Indian Education Program, Title VII

325 Sanchez Street
San Francisco, CA. 94114
(415)517-4573
<http://www.sfusd.edu/en/programs-and-services/state-and-federal-programs/indian-education-program.html>

Statewide Directory of Resources & Services for Native American Families in California

<http://www.courts.ca.gov/5807.htm>

Through the Looking Glass

3075 Adeline St., Ste. 120
Berkeley, CA 94703
(510)848-1112 xt 8115
Fax: (510)848-4445
<http://lookingglass.org/home>
*Services & Advocacy for Disabled NativeAmerican Families

Washoe TANF-San Francisco Office

33 New Montgomery Street, Suite 210
San Francisco, CA 94105
(415)-284-9661
Fax: (415) 284-9655

USEFUL LINKS

California Courts Judicial Branch: <http://www.courts.ca.gov/>

Judicial Council-"Tribal/State Programs Unit": <http://www.courts.ca.gov/programs-tribal.htm>

Tribal/State Programs Unit-ICWA Page: <http://www.courts.ca.gov/3067.htm>

Tribal/State Programs Unit-California Tribal Communities Page: <http://www.courts.ca.gov/3066.htm>

California Department of Social Services: www.childsworld.ca.gov

This is the direct link to CDSS Children and Family Services Division. Scroll down to Featured Links and click on Indian Child Welfare Act (ICWA). This page provides a link to the Indian Child Welfare Act passed by Congress in 1978. It also provides contact information for Social Workers, CalWORKs and ICWA Specialist and within the Tribes. There are Helpful Links:

- ICWA Resources and Job Aids
- ICWA Workgroup Information
- County Letters and Notices
- Legislation and Regulations
- Agencies and Organizations:
 - State and Federal Agencies
 - Training and Technical Assistance
 - Tribal Advocacy, Legal Assistance and Court Information (which includes a direct link to the AOC ICWA Initiative)

Bureau of Indian Affairs: www.bia.gov

This is a valuable site with information pertaining to all tribes in the United States. On the right hand side there is a drop down box: CHOOSE A SERVICE. Go to Tribal Directory for a list of all the federally recognized tribes or Division of Social Services of a list of ICWA Designates for Service of Process. It also has an Indian Child Welfare Act link. To access the Guide to Tracing Your American Indian Ancestry, click on the Documents Library tab at the top of the home page and scroll down the list.

Judicial Council Forms (ICWA 010, 020, 030) <http://www.courts.ca.gov/forms>

List of Non-Federally Recognized Tribes: www.kstrom.net/isk/maps

Native American Rights Fund: www.narf.org

US Dept of Health & Human Services: <https://www.childwelfare.gov/systemwide/courts/icwa.cfm#examples>

National Indian Child Welfare Association (NICWA): <http://www.nicwa.org/>

XIV. ICWA Checklist

INDIAN CHILD WELFARE ACT COMPLIANCE CHECKLIST					
	Yes	No	N/A	Date Completed	Persons contacted or other notes
DETERMINATION OF INDIAN ANCESTRY					
1. Inquiry About Indian Ancestry (Specific information located on page 11 of the ICWA Social Worker Manual)					
a) Have both parents been identified?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
b) Have attempts to locate absent/missing parent begun?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
c) Have both parents or guardian and child, if age appropriate, been asked if child is American Indian or have American Indian Ancestry?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
d) Have both parents been asked if they are members of a federally recognized tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
e) Are the child and parents' race and ethnicity documented in the case record?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
f) If suspected of having Indian Heritage, is the child being treated as an ICWA case until ruled out?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
g) Has Notice of Inquiry under the Indian Child Welfare Act been sent to the identified tribe(s)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2. Mandatory ICWA Inquiry & Notice Forms (Specific information located on page 15 of the ICWA Social Worker Manual)					
a) ICWA-010(A) Indian Child Inquiry http://www.courts.ca.gov/documents/icwa010a.pdf	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
b) ICWA - 020 Parental Notification of Indian Status http://www.courts.ca.gov/documents/icwa020.pdf	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
c) ICWA- 030 Notice of Custody Proceeding http://www.courts.ca.gov/documents/icwa030.pdf	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Identification of Indian Child(ren) (Specific information located on page 11 of the ICWA Social Worker Manual)					
a) Is the child a member of a federally recognized tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
b) Is the child a member of a non-federally recognized tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
c) Has documentation of membership been received from the tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
d) If not a tribal member, is the child a biological child of a member? Is the child eligible for membership?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3. Identification of Tribe if it is not Established					
d) Have all possible tribes and Bureau of Indian Affairs been contacted?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
e) Have all steps been taken to establish Indian ancestry? Has eligibility for tribal membership been documented in the case file?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Adapted from the North Carolina Division of Social Services ICWA Checklist 2008

INDIAN CHILD WELFARE ACT COMPLIANCE CHECKLIST

	Yes	No	N/A	Date Completed	Persons contacted or other notes
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TRIBAL NOTIFICATION	(Specific information located on page 15 of the ICWA Social Worker Manual)				
1. Has Notification required by the Indian Child Welfare Act (25 US 1912) been sent by registered mail?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2. Has return receipt of delivery of Notice required by ICWA (25 US 1912) been requested?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3. Is there documentation of tribal contact, address and phone numbers for notification of court proceedings and scheduled reviews?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4. Has contact been made with the Tribe to determine if child resides on the reservation or is a ward of the tribal court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

TRANSFER OF JURISDICTION	(Specific information located on page 18 of the ICWA Social Worker Manual)				
1. Does the tribe have a tribal court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2. If tribe has a tribal court does the tribal court have exclusive jurisdiction over the case because the child resides on a reservation or is a ward of the tribal court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3. Has the tribe or Indian custodian or parent petitioned for a transfer of jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4. Was the transfer request granted?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
5. If yes, is there documentation of transfer of case to tribal court?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
6. Is there a copy of transfer of jurisdiction order in case file?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
7. Is there documentation of Tribe's decision to maintain exclusive or transfer jurisdiction, but allow child to remain in DSS placement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

TRIBAL INTERVENTION	(Specific information located on page 18 of the ICWA Social Worker Manual)				
1. Does the tribe want to be involved in the case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2. Is there documentation of intent of the tribes' desired involvement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

EFFORTS TO PREVENT THE BREAK-UP OF THE INDIAN FAMILY					
1. Is there participation of tribal designee at the early point in case planning?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

INDIAN CHILD WELFARE ACT COMPLIANCE CHECKLIST

	Yes	No	N/A	Date Completed	Persons contacted or other notes
a) Does the child's case plan reflect active efforts to reunify the Indian family?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
b) Is the Tribe given reports or documents filed with the court upon which the court's decision may be based?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2. Has tribal representation, with knowledge of prevailing social and cultural standards within the tribal community been located?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
a) Has the family's circumstances been assessed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
b) Has a case plan been developed with parent/guardian that utilizes tribal and Indian community resources and providers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3. If needed, has financial assistance, CalFresh, housing, etc. been provided?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4. Have extended family members been contacted as a resource for the child?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
5. Has a visitation plan to keep the child in close contact with parents, siblings and other relatives been developed, if the child is in out of home placement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

PLACEMENT PREFERENCES	(Specific information located on page 24 of the ICWA Social Worker Manual)				
1. Has the tribe been contacted to determine if it has established an order of placement preference by resolution?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2. Have the tribe and parent/guardian been notified prior to any change in child/s placement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3. Does the placement meet the placement preferences requirement of ICWA as specified by child's tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4. Is the foster-care or pre-adoptive placement in reasonable proximity to the child's home and the least restrictive setting with the most appropriate family?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

For Foster or Pre-adoptive Placement	(Specific information located on page 25 of the ICWA Social Worker Manual)				
a) Is the placement with a member of the child's extended family?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
b) Is the foster home licensed and approved by the Indian child's tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
c) Is the Indian foster home licensed and approved by non-Indian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

INDIAN CHILD WELFARE ACT COMPLIANCE CHECKLIST

	Yes	No	N/A	Date Completed	Persons contacted or other notes
licensing authority?					
d) Is the child(ren)'s institution approved by the tribe or operated by the Indian Organization which has a program suitable to meet the child/s needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
e) Did the tribe find good cause and allow a different placement for the child?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Expert Witness	(Specific information located on page 29 of the ICWA Social Worker Manual)				
a) Is the placement with a member of the child's extended family?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
b) Is placement with other members of the child's tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
c) Is placement with another Indian Family of similar Indian heritage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
d) Is Placement with another Indian Family?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
e) Has an Expert Witness been identified who understands the prevailing social and cultural standards of the child's tribe and ICWA? (Needed for Dispositional & 366.26 Hearings)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

For Adoptive Placement	(Specific information located on page 28 of the ICWA Social Worker Manual)				
f) Is the placement with a member of the child's extended family?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
g) Is placement with other members of the child's tribe?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
h) Is placement with another Indian Family of similar Indian heritage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
i) Is Placement with another Indian Family?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Federal Placement Preferences of Indian Children

25 U.S.C. § 1915. Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;
or
- (iv) 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.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this Section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

AUTHORITY

The ICWA governs all proceedings in which a court must determine the placement of an Indian child when that child is removed from the custody of his or her parent, guardian or Indian Custodian. The following is a list of the federal and California statutes, regulations, guidelines, court rules and Departmental directives that provide the legal framework of ICWA.

- **ICWA, 25 United States Code Section 1901-1963:** the act passed in 1978 to provide legal protections designed to prevent the breakup of Indian families.
- **ICWA, 25 CFR Part 23:** federal regulations promulgated to assist in the administration of tribal social services, to outline notice procedure and process for court-appointed counsel.
- **Bureau of Indian Affairs (BIA) Guidelines for State Courts:** although not intended to have binding legislative effect, Guidelines are the BIA's interpretations of the ICWA and are intended to be used by courts for guidance.
- **WIC Section 224.1:** definitions according to Section 1903 of the ICWA and Indian child membership in more than one tribe; includes factors that need to be considered when determining with which tribe the child has the more significant contact.
- **WIC Section 224.2:** sets forth the notice requirement for an Indian child custody proceeding, including notice to interested parties and proofs of service.
- **WIC Section 224.3:** provides that county welfare departments have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 is to be, or has been, filed is or may be an Indian child in all dependency proceedings if the child is at risk of entering foster care or is in foster care. It sets out circumstances that may provide reason to know that the child is an Indian child and makes clear that a social worker is required to make inquiry regarding the possible Indian status of the child by interviewing parents, Indian custodian, and extended family members to gather the information required to properly notice the tribe(s). This code section further states that if new information is obtained regarding the child's Indian heritage, the tribe(s) and BIA must be re-noticed with the new information, even if the court already found that ICWA does not apply. Notice must be provided according to WIC Section 224.2.
- **WIC Section 224.4:** states that the Indian child's tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding.
- **WIC Section 224.5:** provides that in an Indian child custody proceeding, the court shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the proceeding to the same extent that such entities give full faith and credit to the public acts, records, judicial proceedings, and judgments of any other entity.
- **WIC Section 224.6:** requires the testimony of a "qualified expert witness" in an Indian child custody proceeding when recommending foster care placement or termination of parental rights. Further explains who qualifies as a "qualified expert witness" and required content of testimony.
- **WIC Section 290.1:** notice requirement for when a child is to be retained in custody, initial petition hearing.
- **WIC Section 290.2:** notice requirement for initial hearing when petition filed.
- **WIC Section 291:** notice requirement for jurisdictional, pretrial, adjudication, or disposition hearing.
- **WIC Section 292:** notice requirement for cases where child(ren) is with parent or guardian.
- **WIC Section 293:** notice requirement for 366.21 or 366.22 hearings.
- **WIC Section 294:** notice requirement for 366.26 hearing.
- **WIC Section 295:** notice requirement for review of permanent plan hearing, 366.3.
- **WIC Section 305.5:** provides that a parent, Indian custodian, and Indian tribe may petition for the Indian child custody proceeding to be transferred to the jurisdiction of the child's tribe, and explains what constitutes good cause to deny such a petition.

- **WIC Section 306.6:** states that the court may permit non-federally recognized tribes to participate in the proceeding upon request of the tribe.
- **WIC Section 361.31:** placement preferences for Indian children proposed to be in foster case, guardianship or adoptive placement.
- **WIC Section 361.4:** provides that the home of every prospective caregiver that is not a licensed or certified foster parent must be visited to assess its appropriateness prior to placing the child in the home and that a criminal records check must be done on all persons over 18 in the home.
- **WIC Section 361.7:** notwithstanding provisions of section 361.5, discussion of active efforts that must be offered and unsuccessful before taking an Indian child into temporary custody (except to prevent imminent physical damage or harm to the child) and prior to termination of parental rights.
- **WIC Section 366.24:** section added effective July 1, 2010; requires the juvenile court and social workers to consider and offer or recommend tribal customary adoption as an additional permanent placement option, without termination of parental rights, for Indian children.
- **WIC Section 366.26:** procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court. Includes under subpart (c)(1)(B)(vi) the exception to termination of parental rights because the child is an Indian child and there is a compelling reason for determining that termination would not be in the best interest of the child.
- **WIC Section 16507.4 (b):** explains voluntary family reunification services and procedure to follow for Indian children.
- **Family Code 7907.3:** the Interstate Compact on the Placement of Children (ICPC) shall not apply to any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court under Section 1911 of the ICWA.
- **Probate Code 1449, 1459, 1459.5:** cross-reference to the Welf. & Inst. Code sections for compliance with the ICWA.
- **California Rules of the Court Rules 5.480 – 5.487:** rules apply to all proceedings involving Indian children, applicable in juvenile, probate and family law matters.
- **California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP)**
- **Division 31-515-520:** sets forth ICWA provisions and policies regarding placement of Indian children.
- **CDSS All County Letter 08-02 (January 30, 2008):** provides information and CDSS analysis of changes in state law as a result of the passage of SB 678, implementing the ICWA into California law.
- **CDSS All County Information Notice I-86-08 (November 20, 2008):** provides information regarding the use of tribally approved homes as placement options for Indian children.
- **CDSS All County Letter 09-28 (June 4, 2009):** clarifies how ICWA requirements and Judicial Council forms impact adoption proceedings.



Photo courtesy of Vida Castaneda

ICWA REQUIRED FORM SAMPLES

ICWA-010(A)

CHILD'S NAME: _____	CASE NUMBER: _____
------------------------	-----------------------

1. Name of child:

Indian child inquiry made not made and (check all that apply):

a. The child is or may be a member of or eligible for membership in a tribe.

Name of tribe(s): _____

Name of band (if applicable): _____

b. The child's parents, grandparents, or great-grandparents are or were members of a tribe.

Name of tribe(s): _____

Name of band (if applicable): _____

c. The residence or domicile of the child, child's parents, or Indian custodian is in a predominantly Indian community.

d. The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service or Tribal Temporary Assistance to Needy Families (TANF).

e. The child may have Indian ancestry.

f. The child has no known Indian ancestry.

g. Other reason to know the child may be an Indian child: _____

Person(s) questioned:

Name: _____

Address: _____

City, state, zip: _____

Telephone: _____

Date questioned: _____

Means of communication: _____

Relationship to child: _____

Summary of information: _____

Person(s) questioned:

Name: _____

Address: _____

City, state, zip: _____

Telephone: _____

Date questioned: _____

Means of communication: _____

Relationship to child: _____

Summary of information: _____

h. Information about other persons questioned is attached.

2. If this is a delinquency proceeding under Welfare and Institutions Code, § 601 or 602:

The child is in foster care.

It is probable the child will be entering foster care.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <hr/> TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ TELEPHONE NO.: _____	
CASE NAME: _____	
NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD (check all that apply): <input type="checkbox"/> JUVENILE <input type="checkbox"/> Dependency <input type="checkbox"/> Delinquency <input type="checkbox"/> ADOPTION <input type="checkbox"/> CONSERVATORSHIP* <input type="checkbox"/> CUSTODY (Fam. Code, § 3041) <input type="checkbox"/> DECLARATION OF FREEDOM FROM CONTROL OF PARENT <input type="checkbox"/> GUARDIANSHIP <input type="checkbox"/> TERMINATION OF PARENTAL RIGHTS <input type="checkbox"/> VOLUNTARY RELINQUISHMENT OF CHILD BY PARENT	CASE NUMBER: _____ HEARING DATE: _____ DEPT.: _____

NOTICE TO (check all that apply):

- Parents or Legal Guardians Tribes Indian Custodians Sacramento Area Director, BIA
 Secretary of the Interior

1. NOTICE is given that based on the petition, a copy of which is attached to this notice, a child custody proceeding under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) has been initiated for the following child (a separate notice must be filed for each child):

<u>Name</u>	<u>Date of Birth</u>	<u>Place of Birth</u>
-------------	----------------------	-----------------------

2. HEARING INFORMATION

a. Date: _____ Time: _____ <input type="checkbox"/> Dept.: _____ <input type="checkbox"/> Room: _____ <input type="checkbox"/> Type of hearing: _____
--

b. Address and telephone number of court same as noted above is (specify): _____

3. The child is or may be eligible for membership in the following Indian tribes (list each):

*Use this form in a conservatorship only if the proposed conservatee is a formerly married minor.

Family Tree or Pedigree Chart

Completed by:

Agency/court:

GREAT-GRANDFATHER
GREAT-GRANDMOTHER

GREAT-GRANDFATHER
GREAT-GRANDMOTHER

GREAT-GRANDFATHER
GREAT-GRANDMOTHER

PATERNAL GRANDFATHER
PATERNAL GRANDMOTHER

MATERNAL GRANDFATHER
MATERNAL GRANDMOTHER

FATHER

MOTHER

CHILD'S NAME

{ Court Case No. }

NOTES



JUDICIAL COUNCIL OF CALIFORNIA

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

Social Work Practice Tips for Inquiry and Noticing *Reasons Why People Do Not Claim to Be American Indian*¹

There are many reasons why individuals do not claim their American Indian heritage. This has implications for ICWA compliance especially in the area of inquiry and noticing. If an Indian child is not known to be American Indian/Alaskan Native (AI/AN) how can social workers and service providers ensure culturally effective services and case plans?

Below is a brief list of responses that can be given by individuals that do not claim their American Indian heritage.

- *“I know we’re part Indian but not enough.”*
- *“I, my mom, or my dad was adopted.”*
- *“No one knows the real history anymore, that person passed a long time ago.”*
- *“No one talks about it.” And/or “We don’t talk about it with anyone.”*
- *“I heard our family was disenrolled.”*
- *“It was painful so we don’t talk about it.”*
- *“We heard different stories and are not sure if it’s true or not.”*
- *“Grandpa only talked about it late at night.”*
- *“It’s in the past now, you can’t go back.”*
- *“Someone lost the papers.”*
- *“I can’t prove it.”*
- *“I didn’t know until recently, so I don’t think we qualify.”*
- *“When dad came here to work we lost our history.”*
- *“I don’t know our history, but I heard something. We were told we didn’t need to know.”*
- *“No one speaks the language anymore, so we don’t talk about it.”*

Practice Tips to ensure effective inquiry:

1. It is important to ask every family and every child if they have American Indian/Alaska Native ancestry even though they may not “look” as though they have American Indian/Alaska Native ancestry. Remember that many American Indian families will have Spanish last-names as a result of the influence of Spanish Missions from 1769 – 1823.

¹ This document was developed as part of the American Indian Enhancement of the Annie E. Casey, Casey Family Programs, & Child and Family Policy Institute of the California Breakthrough Series (BSC) on addressing disproportionality 2009-2010 with support from the Bay Area Collaborative of American Indian Resources (BACAIR), Human Services Agency of San Francisco Family and Children Services, Alameda County Social Services, and in collaboration with the American Indian Caucus of the California ICWA Workgroup, Child and Family Policy Institute of California, Stuart Foundation, and Tribal STAR.

2. Encourage social workers/intake workers to *state (rather than ask)*, “if you are AI/AN or believe you may be affiliated with a tribe, there are additional services (ICWA) that are available to you.”
3. Talking to that family historian may yield a lot of information. Ask them “who are the keepers of the family history?” Usually there is one family member, or a few, who are gifted in this area.
4. Consider asking families about specific areas relatives may have lived or originated from. “Has anyone in your family ever lived on a reservation?”
5. Consider asking if they also have ever utilized Native American services, or if anyone has in the family?
6. Remember to continue to cultivate and build trust-based communication with children and families and continue to ask if they have AI/AN ancestry throughout the life of the case.
7. Document all your efforts of inquiry and document all you do to achieve proper inquiry and notice.

Background

It is a significant challenge for American Indians who have been removed from their tribe to claim tribal ties to a Native American community. This can be due to the complex process of identifying ancestors and being able to establish family blood lines. How an individual comes to know their heritage, and how much they know varies from region, to tribe, to family. With over 500 recognized tribes, over 100 terminated tribes, and countless unrecognized tribes across the United States each family has a unique history with their tribe. As a result of federal and state policies that promoted assimilation and relocation (1830s Removal Era through 1950s Termination Era), many individuals and their families lost connection to their relations, customs, and traditions. The effects of boarding schools, and religious proselytizing, left many with the perception that it was better to pass as non-Indian than to claim their tribal status. In 1952 the federal government initiated the Urban Indian Relocation Act designed to increase the American Indian workforce in eight cities (Los Angeles, San Francisco, San Jose, St. Louis, Cincinnati, Dallas, Chicago, and Denver,).

Historical and federal efforts to quantify and track the American Indian/Alaska Native populations through the census, and the establishment of “Indian Rolls” resulted in documentation of enrollment in a tribe, often verified by blood quantum (amount/percentage of documented American Indian/Alaska Native blood). Tribal nations are not uniform in determining who is a tribal member through this manner. Some tribes acknowledge descent and ancestry verified by proof of family lineage rather than ‘how much Indian blood’. Conversely, in some cases, tribal enrollment policies exclude many individuals from enrollment for political, historical, and reasons known only to their tribal membership. Enrollment in a tribe may only be open at certain times, which can also affect an individual’s eligibility for enrollment.

Many descendants have only bits and pieces of information, sometimes passed along with quiet dignity, often with a longing to know more. What information was passed along may have been

shrouded in shame or secrecy for unknown reasons resulting in reluctance to share the information. The number of families that are disconnected from their ancestral homeland grows exponentially each generation and many individuals find connection to Native American communities through intertribal, regional, and local cultural events. These community events enable a sense of belonging and kinship, and provide support for resilience through access to programs such as Title VII Indian Education, and Tribal TANF, that do not require proof of enrollment.



JUDICIAL COUNCIL OF CALIFORNIA

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

ICWA Information Sheet - ICWA Inquiry (DEPENDENCY)

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 224.3(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 dependency petition is filed or may be filed, and 2) Further inquiry which is required in those cases in which initial inquiry gives “reason to know” that an Indian child may be involved.

Initial inquiry is fairly simple. It consists of asking (1) the child (if old enough), (2) the parents, (3) guardians, (4) custodians whether the child is or may be an Indian child. (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) Although not explicitly required by statute, it is a good idea to ask about Indian ancestry from all available family members. This helps lessen the chance that ICWA information could emerge late in the case.

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” (ie. reunification) to “termination of parental rights” (ie. permanency) and “pre-adoptive” and “adoptive placement”, be sure to revisit this issue.

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. Further Inquiry /Do you have “reason to know”?

According to WIC 224.3, information “suggesting” that the child is or may be an Indian child is sufficient to give you “reason to know the child is an Indian child”. 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. Where ever the information comes from, a “reason to know” triggers other requirements.

Federal regulations require that when you have reason to know you must confirm by way of evidence on the record that the agency or other party has 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”.¹

When you have reason to know, you must ensure the court or the agency conducts “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 (ie 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.

¹ 25 C.F.R. §23.107 (b).

Caution – per WIC 224.3(c) 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.

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. Required Extent of Inquiry

The goal of ICWA inquiry is to obtain all of the information necessary to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child* (<http://www.courts.ca.gov/documents/icwa030.pdf>) It is rare that you will be able to gather all of the information to complete the form entirely. The question then in each case is whether or not the inquiry was sufficient. This is very fact specific. The court and the agency are not required to “cast about” after vague information, but must make all “reasonable efforts” to obtain complete information. You do not need to do genealogical research or order birth or death records, but you do need to ask for contact information for relatives or others who might have information and make reasonable efforts to contact them. At a minimum you must: interview parents; Indian custodian; relatives; extended family members and others who might reasonably be able to provide the information required to complete the ICWA-030 (WIC 224.3 (c)).

5. Document Further Inquiry in the Court file

Efforts at further inquiry should be documented in the court file. This can be done as part of court reports or separate declarations or other filings.

6. 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 resolved and the correct judicial findings are made so that the matter does not simply linger.

The proper outcome will depend upon the results of the “further inquiry”. If as a result of inquiry there is only vague information that some distant ancestor “may” have had Indian ancestry, such

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.

that the information falls more into the category of “family lore”, and no specific tribe can be identified, then ICWA notice may not be required. However, before making such a finding the court should ensure that all available relatives have been questioned. The court should also ask both parents and their counsel whether any further information is available.

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 card³ is produced or the court has previously found ICWA applicable to the child, or where as 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)).

³ Note that not all tribes issue such cards, but where they do it is *prima facie* proof of tribal membership.



JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION

CENTER FOR FAMILIES, CHILDREN & THE COURTS

Judicial ICWA (Indian Child Welfare Act) Step 1: Initial Inquiry Checklist¹

1. Have the parties certified on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child? yes no
2. Have the parties been instructed to inform the court if they subsequently receive information that provides reason to know the child is an Indian child? yes no
3. Is the ICWA-010(A) *Indian Child Inquiry Attachment* completed and in the file? yes no
4. Does the completed ICWA-010(A) indicate who was questioned regarding the child's possible Indian status? yes no
5. Do the persons questioned (as shown in the ICWA-010(A) and any attachments to it) include:
 - a. the child(ren)'s parent 1? yes no
 - b. the child(ren)'s parent 2? yes no
 - c. the child(ren)'s Indian custodian (if there is one)? yes no

¹ The above list represents the basic requirements of "Initial Inquiry". If you answered no to any of the above, you should either ensure that the step is completed, or that the record reflects the reason this step was not completed before moving forward with an ICWA determination. For instance there may be no completed ICWA-020 for a parent because the parent is unknown or unavailable. You will want this on the record and will also want the record to reflect the efforts made to locate the parent and have the parent complete the ICWA-020. For instance if the parent is incarcerated, was there an effort to have the parent complete the ICWA-020? Was it sent to the parent in prison with a return, stamped envelope?

- d. the child(ren)'s available relatives? yes no
6. Is there a completed and signed ICWA-020 for parent 1? yes no
7. Is there a completed and signed ICWA-020 for parent 2? yes no

Judicial ICWA (Indian Child Welfare Act) Checklist Step 2: Assessing whether you have "Reason to Know"²

1. Is there any information suggesting:
 - a. The child is a member of a tribe or eligible for membership in a tribe?
 yes no
 - b. One of the child's biological parents is or was a member of a tribe?
 yes no
 - c. One of the child's grandparents is or was a member of a tribe?³
 yes no
2. Is the residence or domicile of the child, the child's parents, or Indian custodian in a predominantly Indian community? yes no
3. Has the child or the child's family received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service? yes no

If you checked yes to any one of the above, then you have "reason to know" that the child is an Indian child and you should:

- find that ICWA may apply;

² WIC 224.3 (b) defines the circumstances that may provide reason to know the child is an Indian.

³ Remember that information "suggesting" is a fairly low threshold. Further "membership" does not require "enrollment" unless the tribe specifically states that enrollment is required. WIC 224.3(e)(1). Further, whether someone is a member or eligible for membership is a legal conclusion that many litigants may not know the answer to. The best course is to do thorough inquiry – in other words gather the information necessary to have an expert – the tribe – determine eligibility and send that information to the tribe via the ICWA-030 Notice.

- require the agency or other responsible party to provide evidence by way of report, declaration, or testimony that they have 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). Such due diligence should include at a minimum calling and emailing the designated agents for service of ICWA notice published in the federal register; AND
- order the agency to complete “further inquiry” as soon as possible.⁴

If you did not check yes to any one of the above, then you should rule that based on current information ICWA does not apply. NOTE – later information could give you “reason to know” and require further ICWA compliance.

Judicial ICWA (Indian Child Welfare Act) Checklist

Step 3: Further Inquiry

CAUTION – If you have “reason to know” then the social worker or probation officer is required to make further inquiry.⁵ You cannot shift this duty to another party in the case.⁶

TIP – You should require the agency to submit evidence as to the further inquiry efforts made including names and dates of relatives and others contacted and the results of those contacts. Be particularly careful to ensure that all relatives who are in any way participating in the case or otherwise known to be available are interviewed.

1. Does the record support a finding that the agency interviewed the parent 1 to gather all of the information required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child*? yes no

⁴ NOTE – per WIC 224.3 (c) the duty of further inquiry falls on the social worker or probation officer. In a family law or probate code case, it is the petitioner who is primarily responsible for inquiry. You may not shift this burden of further inquiry to another party to the case. 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.

⁵ Welf. & Inst. Code 224.3(c). In cases governed by the *Family Code* or *Probate Code* per *Family Code* § 177 (b) and *Probate Code* § 1459.5(b) the duty of inquiry falls to the petitioner

⁶ 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.

2. Does the record support a finding that the agency interviewed the parent 2 to gather all of the information required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child*? yes no
3. Does the record support a finding that the agency interviewed the Indian custodian (if there is one) to gather all of the information required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child*? yes no not applicable
4. Does the record support a finding that the agency interviewed available relatives to gather all of the information required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child*? yes no
5. Does the record support a finding that the agency interviewed other individuals who might have this information to gather all of the information required to complete the ICWA-030 *Notice of Child Custody Proceeding for Indian Child*? yes no

TIP – Many cases turn on failure to make full inquiry of available relatives and other individuals. There are cases where an agency was in touch with relatives about placement but failed to ask them questions related to ICWA inquiry. There are cases where relatives were in touch with the agency or appeared in Court but no one asked them questions related to ICWA inquiry. All these failures can result in a case being overturned on appeal based on inadequate ICWA inquiry and notice.



JUDICIAL COUNCIL OF CALIFORNIA

Revised January 2015

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

Indian Child Welfare Act Inquiry Interview

Case name: [Click here to enter text.](#) File number: [Click here to enter text.](#)
Interview date: [Click here to enter a date.](#) Name of person conducting interview: [Click here to enter text.](#)

INFORMATION ABOUT PERSON BEING INTERVIEWED

Name: [Click here to enter text.](#)
Relationship to child: [Click here to enter text.](#)
Address: [Click here to enter text.](#)
Telephone number: [Click here to enter text.](#)
Other contact information: [Click here to enter text.](#)

QUESTIONS

1. Does the child or any of the child's family members have Native American, Alaska Native, or American Indian ancestry?
[Click here to enter text.](#)
2. Is the child a member or eligible for membership in an Indian/American Indian/Native American tribe, band, or Alaska Native village or corporation?
[Click here to enter text.](#)
3. Are or were the child's parents, grandparents, or great-grandparents members of a tribe, band, or Alaska Native village or members of or hold shares in an Alaska Native corporation?
[Click here to enter text.](#)
4. Has the child or any members of the child's family or extended family ever lived on an Indian reservation, rancheria, federal trust property, Alaska Native village, or other type of predominantly Indian community?
[Click here to enter text.](#)
5. Has the child or any members of the child's extended family ever received services or participated in programs primarily directed toward Native American, Indian, or Alaska Native people, such as health or dental services from an Indian health service or Tribal Temporary Assistance to Needy Families?
[Click here to enter text.](#)

-
6. Has the child or the child’s parents, grandparents, or great-grandparents or any other extended family members ever attended an Indian school or other facility primarily intended for Native Americans, Indians, or Alaska Natives?

[Click here to enter text.](#)

7. Have the names of any of the child’s relatives or ancestors ever appeared on the 1906 Final Roll of Indians, the 1924 Roll of Indians, the California Indian Judgment Roll, or any other roll or census of Indian, Native American, or Alaska Native persons?

[Click here to enter text.](#)

If the individual has answered **No** to questions 1–7 and no one else you have interviewed has answered Yes to any of these questions, you may **stop here**.

If *anyone* has answered Yes to any one of questions 1–7, you have “reason to know” the proceedings involve an Indian child and must make every effort to obtain the following information.

8. If before the initiation of these proceedings the child was not living with or in the custody of one of the child’s biological parents, determine whom the child was living with and ask whether that person is a Native American, Indian, or Alaska Native. If so, he or she is likely an “**Indian custodian**” within the meaning of the Indian Child Welfare Act and you will need to obtain the following information (it will be used to complete item 5f on page 6 of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030)):

Name	Click here to enter text.
Any maiden or married name, former names, or aliases	Click here to enter text.
Current address	Click here to enter text.
Former address	Click here to enter text.
Birth date and place	Click here to enter text.
Tribal, band, or Alaska Native village affiliation, including name and location	Click here to enter text.
Membership or enrollment number, if known	Click here to enter text.

9. Ask for the following information regarding each of the people listed below (it will be used to complete items 5c through 5e at pages 2–5 of the Notice of Child Custody Proceeding for Indian Child (form ICWA-030)):

a. Child’s biological mother

Name	Click here to enter text.
Any maiden or married name, former names, or aliases	Click here to enter text.
Current address	Click here to enter text.
Former address	Click here to enter text.
Birth date and place	Click here to enter text.

Tribal, band, or Alaska Native village affiliation, including name and location [Click here to enter text.](#)

Membership or enrollment number, if known [Click here to enter text.](#)

If deceased, date and place of death [Click here to enter text.](#)

b. Child's biological father (note that ICWA requirements follow biological connection to father, not legal connection)

Name [Click here to enter text.](#)

Any former names or aliases [Click here to enter text.](#)

Current address [Click here to enter text.](#)

Former address [Click here to enter text.](#)

Birth date and place [Click here to enter text.](#)

Tribal, band, or Alaska Native village affiliation, including name and location [Click here to enter text.](#)

Membership or enrollment number, if known [Click here to enter text.](#)

If deceased, date and place of death [Click here to enter text.](#)

c. Mother's biological mother (i.e., child's maternal grandmother)

Name [Click here to enter text.](#)

Any maiden or married name, former names, or aliases [Click here to enter text.](#)

Current address [Click here to enter text.](#)

Former address [Click here to enter text.](#)

Birth date and place [Click here to enter text.](#)

Tribal, band, or Alaska Native village affiliation, including name and location [Click here to enter text.](#)

Membership or enrollment number, if known [Click here to enter text.](#)

If deceased, date and place of death [Click here to enter text.](#)

d. Mother's biological father (i.e., child's maternal grandfather)

Name [Click here to enter text.](#)

Any former names or aliases [Click here to enter text.](#)

Current address [Click here to enter text.](#)

Former address	Click here to enter text.
Birth date and place	Click here to enter text.
Tribal, band, or Alaska Native village affiliation, including name and location	Click here to enter text.
Membership or enrollment number, if known	Click here to enter text.
If deceased, date and place of death	Click here to enter text.

e. Father's biological mother (*i.e.*, child's paternal grandmother)

Name	Click here to enter text.
Any maiden or married name, former names, or aliases	Click here to enter text.
Current address	Click here to enter text.
Former address	Click here to enter text.
Birth date and place	Click here to enter text.
Tribal, band, or Alaska Native village affiliation, including name and location	Click here to enter text.
Membership or enrollment number, if known	Click here to enter text.
If deceased, date and place of death	Click here to enter text.

f. Father's biological father (*i.e.*, child's paternal grandfather)

Name	Click here to enter text.
Any former names or aliases	Click here to enter text.
Current address	Click here to enter text.
Former address	Click here to enter text.
Birth date and place	Click here to enter text.
Tribal, band, or Alaska Native village affiliation, including name and location	Click here to enter text.
Membership or enrollment number, if known	Click here to enter text.
If deceased, date and place of death	Click here to enter text.

g. Mother's biological grandmother on her mother's side (i.e., child's maternal great-grandmother)

Name	Click here to enter text.
Any maiden or married name, former names, or aliases	Click here to enter text.
Current address	Click here to enter text.
Former address	Click here to enter text.
Birth date and place	Click here to enter text.
Tribal, band, or Alaska Native village affiliation, including name and location	Click here to enter text.
Membership or enrollment number, if known	Click here to enter text.
If deceased, date and place of death	Click here to enter text.

h. Mother's biological grandmother on her father's side (i.e., child's maternal great-grandmother)

Name	Click here to enter text.
Any maiden or married name, former names, or aliases	Click here to enter text.
Current address	Click here to enter text.
Former address	Click here to enter text.
Birth date and place	Click here to enter text.
Tribal, band, or Alaska Native village affiliation, including name and location	Click here to enter text.
Membership or enrollment number, if known	Click here to enter text.
If deceased, date and place of death	Click here to enter text.

i. Mother's biological grandfather on her mother's side (i.e., child's maternal great-grandfather)

Name	Click here to enter text.
Any former names or aliases	Click here to enter text.
Current address	Click here to enter text.
Former address	Click here to enter text.
Birth date and place	Click here to enter text.
Tribal, band, or Alaska Native village affiliation, including name and location	Click here to enter text.

Membership or enrollment number, if known [Click here to enter text.](#)

If deceased, date and place of death [Click here to enter text.](#)

j. Mother's biological grandfather on her father's side (i.e., child's maternal great-grandfather)

Name [Click here to enter text.](#)

Any former names or aliases [Click here to enter text.](#)

Current address [Click here to enter text.](#)

Former address [Click here to enter text.](#)

Birth date and place [Click here to enter text.](#)

Tribal, band, or Alaska Native village affiliation, including name and location [Click here to enter text.](#)

Membership or enrollment number, if known [Click here to enter text.](#)

If deceased, date and place of death [Click here to enter text.](#)

k. Father's biological grandmother on his mother's side (i.e., child's paternal great-grandmother)

Name [Click here to enter text.](#)

Any maiden or married name, former names, or aliases [Click here to enter text.](#)

Current address [Click here to enter text.](#)

Former address [Click here to enter text.](#)

Birth date and place [Click here to enter text.](#)

Tribal, band, or Alaska Native village affiliation, including name and location [Click here to enter text.](#)

Membership or enrollment number, if known [Click here to enter text.](#)

If deceased, date and place of death [Click here to enter text.](#)

l. Father's biological grandmother on his father's side (i.e., child's paternal great-grandmother)

Name [Click here to enter text.](#)

Any maiden or married name, former names, or aliases [Click here to enter text.](#)

Current address [Click here to enter text.](#)

Former address [Click here to enter text.](#)

Birth date and place [Click here to enter text.](#)

Tribal, band, or Alaska Native village affiliation, including name and location [Click here to enter text.](#)

Membership or enrollment number, if known [Click here to enter text.](#)

If deceased, date and place of death [Click here to enter text.](#)

m. Father's biological grandfather on his mother's side (i.e., child's paternal great-grandfather)

Name [Click here to enter text.](#)

Any former names or aliases [Click here to enter text.](#)

Current address [Click here to enter text.](#)

Former address [Click here to enter text.](#)

Birth date and place [Click here to enter text.](#)

Tribal, band, or Alaska Native village affiliation, including name and location [Click here to enter text.](#)

Membership or enrollment number, if known [Click here to enter text.](#)

If deceased, date and place of death [Click here to enter text.](#)

n. Father's biological grandfather on his father's side (i.e., child's paternal great-grandfather)

Name [Click here to enter text.](#)

Any former names or aliases [Click here to enter text.](#)

Current address [Click here to enter text.](#)

Former address [Click here to enter text.](#)

Birth date and place [Click here to enter text.](#)

Tribal, band, or Alaska Native village affiliation, including name and location [Click here to enter text.](#)

Membership or enrollment number, if known [Click here to enter text.](#)

If deceased, date and place of death [Click here to enter text.](#)

10. If the answer to **question 1** was **Yes**, what family members do or may have Native American, Alaska Native, or Indian ancestry?

[Click here to enter text.](#)

11. If the answer to **question 2** was **No**, what are the name and location of the tribe, band, or Alaska Native village or corporation? Obtain address and contact information if possible.

[Click here to enter text.](#)

- a. Does the child or parent have an enrollment card or other similar document from the tribe, band, or Alaska Native village or corporation? (If so, make every effort to obtain a copy.)

[Click here to enter text.](#)

12. If you are informed that the child or any members of his or her family ever **attended an Indian school**, gather the following information (it will be used to complete item 7a on page 6 of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030)):

Name of person and relationship to child [Click here to enter text.](#)

Type of school [Click here to enter text.](#)

Dates of attendance [Click here to enter text.](#)

Name and location of school [Click here to enter text.](#)

13. If you receive information that the child or any members of his or her family ever **received medical or dental or other treatment** from an Indian health clinic, U.S. Public Health Service hospital, Tribal Temporary Assistance for Needy Families (TANF) or any other service, program, or organization that provides services primarily for the benefit of or directed toward Indians/Native Americans or Alaska Natives, gather the following information (it will be used to complete item 7b on page 7 of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030)):

Name of person and relationship to child [Click here to enter text.](#)

Type of treatment or service [Click here to enter text.](#)

Dates of treatment or service [Click here to enter text.](#)

Name of facility or organization [Click here to enter text.](#)

Location where treatment or service was given [Click here to enter text.](#)

14. If you receive information that the child or any members of his or her family ever **lived on** any trust land, reservation, rancheria, or allotment or in an Alaska Native village, gather the following information (it will be used to complete item 7c on page 7 of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030)):

Name of person and relationship to child [Click here to enter text.](#)

Name, description, or location of the property or location [Click here to enter text.](#)

Dates of residence [Click here to enter text.](#)

15. If you receive information that the names of relatives or members of the child's family **appear on a roll or census** of Indian, Native American, or Alaska Native people, obtain the following information (it will be used to complete item 8 on page 7 of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030)) :

Name of relative and relationship to child [Click here to enter text.](#)

Name and date of census or roll [Click here to enter text.](#)

Person's roll or census number [Click here to enter text.](#)

Tribal affiliation and location, if any, listed on the roll or census [Click here to enter text.](#)

16. If the individual you are interviewing does not have all of this information, ask whether there are any other people (family members or otherwise) whom you should speak to who might have the missing information, and get contact information for those people.

[Click here to enter text.](#)



JUDICIAL COUNCIL OF CALIFORNIA

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

ICWA Information Sheet - NOTICE (DEPENDENCY)

1. Overview

State and federal law require notice under the *Indian Child Welfare Act* (ICWA) in all dependency proceedings whenever it is known or there is reason to know that an Indian child is involved (WIC 224.2 (b)). Lack of, or errors in ICWA notice is a very common reason for cases to be over turned on appeal. Although there are published cases in which appellate courts have held that notice was not required on the facts of a specific case, by far the majority of reported cases find that the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement of the ICWA in a child dependency proceeding (see eg. *In re Christian P.*, (2012) WL 2990034). The ultimate determination of whether or not a particular child is a member of a tribe or eligible for membership is for the tribe(s) entitled to notice. (WIC 224.3 (e)(1); Complete, timely and accurate notice is essential in order for tribes to exercise their authority to make this determination, as well as exercise all of the other rights given to the tribe under ICWA. Therefore we strongly recommend that the court err on the side of ensuring that ICWA notices are sent in all cases in which there is substantive information suggesting possible tribal membership or eligibility. Although there is no bright line and ICWA notice cases are very fact specific, a good rule of thumb is that if a particular ancestor (no matter how far back) or ancestors is identified as the source of tribal affiliation and a particular tribe or tribes are identified, ICWA notice is required.

The court must exercise supervision over the ICWA noticing process to ensure that the legal requirements are met and to minimize the possibility of appeal. In California, ICWA notice must be sent on Judicial Council form ICWA-030 *Notice of Child Custody Proceeding for an Indian Child* and must comply with the requirements of WIC 224.2 and CRC 5.481 (b). The things that the court must look at to ensure compliance with the notice provisions include:

- Content – is the notice as complete and accurate as it can reasonably be given the available information?
- Distribution – did the notice go to all of the individuals, tribes and governmental entities who are required to receive the notice?

- Method – did the notice go by certified mail, return receipt requested and is the necessary documentary proof in the court file? and
- Timing – was the notice timely **received** and is there proof of this in the court file?

2. How to review a notice and assess whether it is adequate

a) Content

The required content of the ICWA notice is set out in federal regulations¹ and state law². Those requirements are reflected in mandatory Judicial Council form ICWA-030 *Notice of Child Custody Proceeding for an Indian Child*. The required content includes:

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, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.³

Federal regulations require information concerning all lineal ancestors of the child.⁴ The court and the child welfare department have an affirmative and continuing duty to seek to obtain this information throughout the life of a case where they know or have reason to know that the child is or may be an Indian child.⁵ This includes an obligation to interview the child’s parents, extended family, relatives and other available individuals who may have the information necessary to complete the ICWA-030. Although the statute only requires that the court and agency affirmatively seek out ancestry information as far back as great-grandparents, these are **minimum federal standards** and case law holds that where relevant information is available or provided about ancestors further back than great-grandparents, that information must be included in the ICWA notice.⁶ This information can be included in item 7 d. at page 7 of the ICWA-030 *Notice of Child Custody Proceeding for an Indian Child*.

The court must be diligent in ensuring that all available information is obtained and included in the ICWA-030 and that it is as complete and accurate as possible because this information is essential to a tribe’s determination of whether the child is or may be a member or eligible for membership in the tribe. Cases have been overturned on appeal for missing middle names, misspellings, wrong birthdays and for failure to include information which could have

¹ 25 CFR 23.11

² WIC 224.2

³ WIC 224.2 (a)(5)(C).

⁴ 25 CFR 23.111(d)(3)

⁵ See WIC 224.3 and ICWA Inquiry factsheet for more information on nature and scope of duty of inquiry.

⁶ *In re S.E.* (2013) 217 Cal. App. 4th 610.

(reasonably) been obtained from available individuals. (see ICWA-030 review checklist for review steps and suggestions).

The court should discourage the practice of leaving fields blank and instead ask the agency to indicate (where appropriate) that the information was not known by any of the available sources. Beware of notices where the parents or other available relatives birth dates and place of birth are left blank despite the parents or relatives participation in the proceedings.

Because an individual may have been enrolled with a tribe at any time during their life, be careful to ensure that birth names, maiden names, and all other former names are included as well as an individual's current name.

b) Distribution

The ICWA notice must be sent to:

- The child's parents or legal guardian;
- The child's Indian custodian (if there is one); and
- All tribes of which the child may be a member or eligible for membership, until the court makes a determination as to which tribe is the child's tribe after which notice need only be sent to that tribe.⁷

Many ICWA notice appeals arise from a failure to provide notice to all the tribes that should be noticed, or to provide notice to the correct address for service for one or more tribes.

(a) How do you know which tribe's must be given notice?

The tribe or tribes that must be noticed depends upon the information obtained during inquiry and further inquiry and recorded on the ICWA-030. Review the information on the ICWA-030 and in particular the information in 5 (a) through (f), pages 2 through 6. For each individual look at the information in the box "Tribe or band, and location:"

The information contained here is generally of three kinds: (1) name of a specific tribe which may be federally recognized or may be an unrecognized tribe; (2) name of a larger historical tribal nation which may contain a number of different tribes or bands which may be federally recognized or unrecognized⁸; or (3) location (ie. a state).

⁷ See WIC 224.2 (a).

⁸ For a discussion of some of the issues around tribal identification refer to *Understanding ICWA Noticing Issues in California* <http://www.courts.ca.gov/documents/ICWANoticingIssues.pdf>

If the information contains the name of a specific tribe the court should ensure that the agency has:

- Consulted the list of *Indian Entities Recognized and Eligible to Receive Services from the United State Bureau of Indian Affairs* published by the Department of the Interior: <http://www.bia.gov/cs/groups/xraca/documents/text/idc1-033010.pdf> Bureau of Indian Affairs and located on the BIA website at to determine if the tribe is listed there; and
- Contacted the appropriate Bureau of Indian Affairs office to determine whether there are federally recognized tribes associated with that name or a similar name.

TIP - Beware of variations of spelling or incorrect spelling that the parents or other individuals involved in the case may have provided. Cases have been overturned on appeal where the information provided during inquiry misspelled the tribal name and the agency neglected to send notice to tribe with very similar phonetic name. WIC 224.3(c) specifically requires the agency to contact "...the Bureau of Indian Affairs and 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." The Bureau of Indian Affairs in Sacramento has a regional social worker who can be reached by telephone at (916) 978-6000 and by fax at (916) 978-6099. The California Department of Social Services has an Office of Tribal Affairs. Contact information for that unit is available at <http://www.cdss.ca.gov/inforesources/Tribal-Affairs>.

- If the information provided contains the name of a larger historical tribal entity (in California such as Pomo or Cahuilla outside of California such as Cherokee) which a number of tribes or bands may identify with, ensure that in addition to consulting the list of Indian Entities referenced above, the agency has consulted and cross-referenced the tribal government list maintained by the federal government at *Indian Child Welfare Act; Designated Tribal Agents for Service of Notice - Listing of Tribes by Historical Affiliation*, available [here](#). These lists include the historical tribal information and lists the federally recognized tribes associated with those historical tribal nations.
- If the information provided contains only location (ie. ancestor born on a reservation in Oklahoma or member of a tribe in Arizona), ensure that the agency has consulted both the Bureau of Indian Affairs regional office responsible for that state, and the index of tribal entities by state found in the tribal leader's directory and map published by the Bureau of Indian Affairs and available [here](#)

Once all steps have been taken to identify the tribes which must be noticed, ensure that notices are sent to all tribes at the address for service listed on the *Indian Child Welfare Act; Designated Tribal Agents for Service of Notice* published by the Bureau of Indian Affairs and

available [here](#). Ensure that for each tribe the notice is addressed to the correct individual and the exact address as shown on this list.

TIP – At some time preferably prior to disposition the Court should ask all parties for their position on whether or not the content of the notice is complete and accurate and whether or not it has been sent to all of the correct tribes that are entitled to notice. Be sure that parents’ counsel have reviewed the content of the notice with their clients and that their clients have no corrections and no further information which should be contained in the notices.

c) Method

Federal and state law require that ICWA notice be provided by certified or registered mail, return receipt requested.⁹ California law specifically requires that “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...”¹⁰ The agency may have less formal communications with a tribe or tribal representative in relation to a case. Such communications are encouraged in order to ensure that ICWA issues may be promptly and appropriately addressed. However, such informal communications do not take the place of the formal notice required by law.

TIP – While informal contacts between the agency and identified tribes is encouraged in order to provide information and assist with tribal engagement, these information contacts do not take the place of formal notice required under state and federal law. Beware of accepting representations from the agency as to what a tribal representative said about eligibility or membership. You must ensure that adequate and complete notice was provided as required by the law.

d) Timing

Generally, federal and state law require that ICWA notice **BE RECEIVED** at least 10 days before a hearing can take place.¹¹ California law makes an exception for the detention hearing, but requires that notice of the hearing be given as soon as possible after the filing of the petition initiating the proceeding and also requires that proof of the notice be filed with the court within 10 days after the filing of the petition.¹² Note that federal law governing the timing of notice does not make such a distinction between hearing types, although 25 U.S.C. § 1922 does say that

⁹ The federal statute (25 U.S.C. § 1912 (a)) states that notice must be sent “...by registered mail with return receipt requested...”. Implementing federal regulations (25 CFR § 23.11) state that notice must be sent “...by certified mail with return receipt requested...” California law (WIC § 224.2(a)(1)) states “notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended, but not required.”

¹⁰ WIC 224.2(c).

¹¹ 25 U.S.C. §1912 (a); WIC § 224.2 (d).

¹² WIC § 224.2 (d).

the provisions of the subchapter do not “...prevent the emergency removal of an Indian child...” to prevent imminent physical damage or harm to the child.



JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION

CENTER FOR FAMILIES, CHILDREN & THE COURTS

Judicial ICWA (Indian Child Welfare Act) Checklist - Evaluating sufficiency of ICWA Notice

1. Has a copy of the ICWA notice been filed with the court? yes no
2. Was ICWA notice provided using mandatory Judicial Council form ICWA-030 *Notice of Child Custody Proceeding for an Indian Child*? yes no
3. Does the ICWA notice contain all of the information obtained during “initial inquiry” and “further inquiry” (see requirements in Inquiry Checklists)?
 yes no
4. For any fields left blank, does the record support a finding that the Agency took all reasonable steps to obtain the information? yes no
5. For any fields left blank, have you asked the parent(s) whether they are able to provide the information or whether there are other available individuals who can provide the information? yes no
6. Does the service list starting at page 10 of the form, and continuing onto ICWA-030(A) if necessary, include all of the tribes which were identified during Inquiry and Further Inquiry as entitled to notice? yes no
7. Has proof of mailing by certified or registered mail return receipt requested to all of the parties (including all tribes) entitled to notice been filed with the court? yes no

8. Has proof that the notices were received by all of the parties (including all tribes) entitled to notice at least 10 days prior to the hearing been filed with the court? yes no

9. If the agency says that it has received response(s) from tribe(s), have copies of the response(s) been filed with the court? yes no

10. Has any tribe requested further information? yes no

11. If yes, is there evidence to support a finding that the agency made all reasonable efforts to provide this information? yes no



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Why Is Notice Under The Indian Child Welfare Act (ICWA) So Hard To Get Right?¹

Introduction

More Indian Child Welfare Act (ICWA) cases are overturned for failure to give proper notice than for any other cause. Given that ICWA has been around since 1978, why is this still such a problem?

The answer is that finding out where to send notice is much more complicated than many people realize. This is particularly true in California. California has more than 100 federally recognized Indian tribes, as well as unrecognized tribes, and more individuals with Indian ancestry than any other state in the nation. Many of these individuals trace their Indian ancestry to tribes outside of California; for an individual who does trace his or her ancestry to a historical California Indian tribe, finding out whether or not he or she is “a member or eligible for membership” in a federally recognized tribe, and if so which tribe, can be very difficult.

Historical Conditions and Policies in California

There are a number of historical conditions and policies that make the application of ICWA in California very complicated and very difficult. These include:

- Comprehensive treaties with California Indians were never implemented the way they were in many other areas of the United States.
- In 1851 and 1852, representatives of the United States entered into 18 treaties with tribes throughout California that would have provided for more than 7.5 million acres of reserve land for the tribes’ use. These treaties were rejected by the U.S. Senate in secret session. The affected tribes were given no notice of the rejection for more than 50 years, and the promised reserve lands were never provided.
- Early California Indian law and policy provided that:

¹ Prepared by the ICWA Initiative, Center for Families, Children & the Courts, Judicial Council of California.

- A justice of the peace had the legal authority to remove Indians from lands in a white person's possession
 - Any Indian could be declared vagrant (upon word of a white person) and thrown into jail, and his or her labor could be sold at auction for up to four months, with no pay (called "indenture" but, in effect, slavery)
 - Indian children could be kidnapped, sold, and used as indentured labor, which was effectively slavery slaves
 - Any Indian could be put into indentured servitude (one report mentioned 110 servants who ranged from ages 2 to 50, 49 of whom were between 7 and 12 years old)
 - Government-sponsored militias organized against Indian tribes were allowed²
- As a result, of these policies as well as disease brought by settlers, between 1840 and 1870, California's Indian population plummeted from an estimated 300,000 to an estimated 12,000.
 - Those who survived scattered into small groups and hid themselves and their identity because it was too dangerous to remain as a group and be identified as Indian.
 - No land base was set aside for most Indians in California.
 - Few California tribes have substantial "reservations."
 - Instead of substantial reserve lands for California's Indian population, in the early 1900s, small plots of land were set aside for "homeless California Indians."
 - When the federal government did recognize tribes, it tended to identify tribes not by their historical identity, but in terms of the locality in which lands were set aside for them.
 - Then, during the "termination period," in the 1950s and 1960s, the federal government "terminated" more than 40 California tribes; they were no longer recognized as Indians or tribes.
 - Also, during this same timeframe (ie. the 1960's), the federal government relocated 60,000–70,000 Indians from other parts of the country to California, mainly to the Los Angeles and San Francisco Bay areas.
 - Since the 1970s, many terminated tribes have been restored through litigation and legislation.³

This history makes compliance with ICWA requirements in California very complicated and difficult. ICWA requires that when a child is a "member of or eligible for membership in and the biological child of a member of" a federally recognized tribe, notice of most involuntary child custody proceedings must be sent to that tribe. Notice must be sent to the tribal chairman unless the tribe has designated another agent for service of ICWA notice. The Department of Interior is charged with maintaining and publishing a list of "Agents for Service of ICWA Notice" in the federal register. The list

² For more information on early California Laws and Policies relating to Indians, please see Johnston-Dodds, Kimberly, *Early California Laws and Policies Related to California Indians* (California Research Bureau, Sacramento, CA, 2002).

³ For further information on Termination, Restoration and Federal Acknowledgement of Unrecognized California Tribes, please see the Final Report of the Advisory Council on California Indian Policy, 1997.

was last published in March 8, 2017⁴. The Bureau of Indian Affairs (BIA) Regional Office in Sacramento acknowledges that the information in the federal register list is often out of date as soon as it is published.

Further, in California, as a result of the historical events described above, the way people with a Native American background identify themselves may not be consistent with the way in which tribes are identified by the federal government.⁵

This is a map of historic California tribal territories:



⁴ As of March 2018. That list can be accessed here:

<https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-061761.pdf>

⁵ To a greater or a lesser extent, the same is also true of many tribes throughout the United States.

As the reader can see when comparing these two maps, many of the names by which the federal government currently recognizes tribes bear no relationship to historical tribal identifications.

A similar situation is true, in differing degrees, for many tribes across the United States.

Sorting Through Tribal Lists

At the time of writing, the most recent BIA list of federally recognized Indian tribes was published on January 17, 2017, and can be found at <https://www.gpo.gov/fdsys/pkg/FR-2017-01-17/pdf/2017-00912.pdf>.

This is an alphabetical list of federally recognized tribes throughout the country and contains no contact information.

At the time of writing, the most recent BIA list of Agents for Service of ICWA Notice was published in March 8, 2017 can be found at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-061761.pdf>

This lists the tribes, alphabetically, by BIA region (most California tribes are in the Pacific Region).

If an individual is an enrolled member⁶ of a federally recognized tribe, he or she will likely be able to tell you the name of the tribe as it is identified in the federal register. Many people who identify as California Indians, however, may not be able to tell you the name of their tribe as it appears in the federal register. They may instead identify their tribe by its historic tribal name, for instance Pomo or Cahuilla. If someone states they have Pomo ancestry, it will not be possible to go to the federal register list of Agents for Service of ICWA Notice and look under “P” to find Pomo tribes. There are more than 20 federally recognized tribes whose members trace their ancestry to the historic “Pomo” tribe. Not a single one of these tribes’ federally recognized tribal names begins with the word “Pomo.” Only six of these tribes even have the word “Pomo” in their federally recognized tribal name.

Similarly, if someone states that he or she has Cahuilla ancestry, it is not possible to look up Cahuilla in the federal register and be certain you have found his or her tribe. Although there is a federally recognized tribe named “Cahuilla,” it does not include all people of Cahuilla ancestry. There are nine federally recognized tribes whose members trace their ancestry to the historic Cahuilla tribe. Of those, the federally recognized tribal name of only one (the Cahuilla Band of Mission Indians) begins with the word Cahuilla. Only three have the word Cahuilla in their federally recognized tribal name.

To further complicate matters, several tribes have traditional territories and reservation land bases that straddle the California border. For instance, the Colorado River Indian Tribes (“CRIT”) are recognized by the federal government as a single federally

⁶ Caution: Not all tribes require “enrollment” for membership. In many cases simple descent from an individual on a base roll or early member of the tribe may be sufficient for membership.

recognized tribe. CRIT is, however, composed of descendants of four distinct historic tribes—the Mohave, Chemehuevi, Hopi, and Navajo—who had land set aside in common for them by the federal government in 1865. The reserve straddles the California/Arizona border, with a substantial portion of the reservation lying within San Bernardino County. Nevertheless, because the primary community and tribal offices are located in Arizona, the Colorado River Indian Tribes are not even listed as a “California” tribe in the federal register of Designated Agents for Service of ICWA Notice. Instead, they are listed under the Western Region of BIA, which includes Arizona. The same is true of the Chemehuevi Indian Tribe, the Fort Mojave Indian Tribe, and the Fort Yuma Tribe and perhaps others that also have reserve lands that straddle the California/Arizona border.

The California Department of Social Services (CDSS) has attempted to address some of the difficulties state and local agencies have when trying to use the federal register of Designated Agents for Service of ICWA Notice to determine which tribes they need to send notice to, by creating their own list, which can be found at:

<http://www.childsworld.ca.gov/res/pdf/CDSSTribes.pdf> . Recently the federal Bureau of Indian Affairs has also created a list of tribes by tribal affiliation. That list was last updated 11/28/2015. It is available here: **Indian Child Welfare Act; Designated Tribal Agents for Service of Notice**

This list is updated regularly with information provided by tribes and agencies to the CDSS.⁷ Further, it lists the tribes according to their historic tribal identification and affiliation rather than by their federal register name. This means that if an individual states he or she has Cahuilla ancestry, it is possible to look alphabetically on this list for Cahuilla and find the nine federally recognized tribes whose members trace their ancestry to the historic Cahuilla tribe. Although this list is generally recognized as being a more effective way of obtaining information about where ICWA notice must be sent and as containing more accurate and up-to-date information about tribal contact information, **it is not referred to or recognized in the federal statute or regulations.** ICWA and its implementing regulations refer only to the federal list of Designated Agents for Service of ICWA Notice. This means that if the contact information on the CDSS list for a particular tribe is different from the contact information contained in the federal register list for that tribe, to be protected from reversal on appeal notice will have to be sent **BOTH** to the address listed in the CDSS list and to the address listed in the most current federal register publication of Designated Agents for Service of ICWA Notice.

⁷ If in doing an ICWA noticing, you learn that any of the information contained on the list is out of date or incorrect, you should contact the individuals listed as contacts at CDSS so they can update the information.

Why Don't People Claiming Native American Ancestry Know Whether They Are a Member of a Federally Recognized Tribe or, If So, to Which Tribe They Belong?

State and local agency personnel are sometimes frustrated that people claiming Native American ancestry may have very little information about their potential links to federally recognized tribes. Similarly, sometimes there is frustration that, when notice is sent to tribes, the tribes sometimes take a very long time to determine whether particular individuals are members or eligible for membership in their tribes.

Many of the historical factors discussed above contribute to the problem that people of Native American ancestry are sometimes disconnected from their tribal communities and do not know whether or not they are members of or eligible for membership in a federally recognized tribe. As discussed in the previous section, not all the historic California tribes currently have status as "federally recognized tribes." Reservations were not set aside for all the tribes in California, even the tribes that signed the eighteen 1851–1852 unratified treaties. The idea of a comprehensive "list" of federally recognized tribes is quite recent; one was first published in 1979. The "list" was primarily based on those groups for which the federal government held lands in trust, and thus left out many individuals and families that descend from historic California tribes and identify as Indian even though they might not be eligible for membership in a federally recognized tribe. These people's status as "Indian" has in many ways been confirmed by federal laws and policies. Federal legislation still contains a unique definition of California Indian that more people than just members of federally recognized tribes and that recognizes this broader category as eligible for health and education services from the BIA. This definition, from 25 U.S.C.A. § 1679, is given below:

(b) Eligible Indians

Until such time as any subsequent law may otherwise provide, the following California Indians shall be eligible for health services provided by the Service:

- (1) Any member of a federally recognized Indian tribe.
- (2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant--
 - (A) is living in California,
 - (B) is a member of the Indian community served by a local program of the Service, and
 - (C) is regarded as an Indian by the community in which such descendant lives.

(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.⁸

Further, there may be close historical family connections between people who are currently members of federally recognized tribes and those who are not. An individual's ancestors may primarily identify with a group that is not currently federally recognized, but they may still be eligible for membership in one or more federally recognized tribes. This is why notice must be sent to each tribe of which a child "may be eligible for membership,"⁹ to allow each tribe to investigate and make a determination about the child's eligibility.

It is important to know that membership criteria vary from tribe to tribe and may change over time. Membership criteria for many California tribes is based on descent from a "base roll" that in many cases was established by the BIA and does not necessarily reflect any historic practice of the tribe. Following are several examples of membership criteria for several California tribes¹⁰:

Example 1:

(a) The membership of the XXXXXXXXXXXX Band of Mission Indians shall consist of all persons whose names appear on the last official per capita payroll of June 1954, and children born to such members as issue of a legal marriage, provided such children shall possess at least 1/8 degree of Indian blood.

(b) No new members may be adopted.

Example 2:

SECTION 1. The membership of the xxxxxxxx Band of Pomo Indians shall consist of-

(a) All persons of Indian blood whose names appear on the official census rolls of the band as of April 1, 1935;

(b) All children born to any member of the band who is a resident of the rancheria at the time of the birth of said children.

SEC. 2. The general community council shall have the power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members, when the resources of the band make such adoptions feasible.

⁸ 25 U.S.C.A. § 1679

⁹ Welf & Inst. Code § 224.2(a)(3)

¹⁰ These examples are taken from tribal constitutions found online at the National Tribal Justice site, www.tribalresourcecenter.org/tribalcourts/codes/constdirectory.asp. We have removed the names of the tribes because we do not know whether the membership criteria are still current.

An individual may know that his or her ancestors identified as Cahuilla but may not know whether any such ancestors' names appeared on a "per capita payroll of June 1954." An individual may not know whether he or she or his or her children possess 1/8 degree Indian blood without completing a family tree (as required by the ICWA-030 form). An individual may know that his or her ancestors identify as Pomo but not know whether any of their names appear on a census roll from April 1, 1935. They may not know whether a particular ancestor was a "resident of the rancheria" at the time of the birth of their children. Similarly, a tribe may not be able immediately to determine whether a particular individual is a member of or eligible for membership in a given tribe without conducting extensive family background research, going back several generations or often beyond. This is why tribes require the detailed information required in the ICWA-030 form. This is why it is critical that this information be complete and accurate. Even with this information, it may take some time for a tribe to be able to check this historical information and make a determination about tribal membership.



JUDICIAL COUNCIL OF CALIFORNIA

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

ICWA Information Sheet: Tribal participation in State court proceedings governed by ICWA.

Under ICWA and corresponding state law, an Indian child's tribe must receive notice of any state court proceedings governed by ICWA involving an Indian child. These proceedings include dependency proceedings, some delinquency proceedings, some family code proceedings and probate guardianship proceedings concerning an Indian child. (see 25 USC § 1903; Fam. Code §§ 170, 177, 3041, Prob. Code § 1459.5, WIC §§ 224, 224.1 CRC 5.480 & 7.1015) Federal and state law mandate and acknowledge a number of substantive and procedural rights of an Indian child's tribe in such state court proceedings, including a right to participate in various ways and an absolute right to intervene in such proceedings "at any point".

Rights if a tribe chooses not to intervene:

An Indian child's tribe is not required to formally intervene in proceedings. If the tribe acknowledges the child, all of ICWA's substantive requirements apply even if the tribe does not intervene. A non-intervening tribe must continue to receive notice of all court hearings involving the child. The tribe must be consulted with respect to the placement of the child. (CRC 5.482(g)) The tribe must be consulted with respect to case planning for both the Indian parents and the Indian child and those case plans must use the available resources of the tribe, extended family members, other Indian service agencies and individual Indian caregivers. (CRC 5.484 (c); CRC 5.690 (c); WIC § 361.7)

Whether or not the tribe intervenes, a representative of the Indian child's tribe is entitled to be present at all court proceedings involving the Indian child (CRC 5.530 (B) (7)) and may address the court, receive notice of hearings, examine all court documents relating to the dependency case, submit written reports and recommendations to the court, and perform other duties and responsibilities as requested or approved by the court. (CRC 5.534 (i))

Right of Intervention:

An Indian child's tribe may intervene, orally or in writing, at any point in the proceedings and may, but is not required to, file with the court the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form ICWA-040) to give notice of their intent to intervene. (CRC rule 5.482 (e); WIC § 224.4; 25 USC § 1911 (c))

The juvenile court has no discretion to deny a tribe's request to intervene. (*In re Desiree F.* (2000) 99 Cal.Rptr.2d 688, 83 Cal.App.4th 460)

Rights of the Intervening Tribe:

A tribe, as an intervening party, is entitled to all rights afforded to any party in a proceeding, including the right to sit at counsel table, the right to examine witnesses, and the right to be given copies of documents. See CCP §387; see also CRC 5.482(e) and Judicial Council form ICWA-040.

Who May Appear on Behalf of the Tribe:

The tribe may choose to be represented by an attorney at the tribe's expense, but the tribe may also designate any person to represent them in court, and this representative must be given the same rights and courtesies as the attorneys involved. (CJER ICWA Bench Handbook, 2013 at page 32).

The court may not limit the tribe's ability to participate effectively in the case if the tribe chooses to be represented by a non-attorney.¹ States' laws regulating attorneys and the practice of law cannot interfere with or burden the federally protected right of the tribe to participate in the proceedings.²

California Rule of Court, rule 5.534 specifically addresses this issue:

(i) Tribal representatives (25 U.S.C. §§ 1911, 1931-1934)

The tribe of an Indian child is entitled to intervene as a party at any stage of a dependency proceeding concerning the Indian child.

(1) The tribe may appear by counsel or by a representative of the tribe designated by the tribe to intervene on its behalf.

The California Rules of the Court, Rule 5.534(i)(1) permits intervention by an attorney or by a representative and makes no distinction between the rights granted to each respectively.

¹ *State v. Jennifer M.*, 277 Neb. 1023, 1024 (2009)

² *State ex rel Juvenile Department of Lane County v. Shuey*, 119 Ore.App. 185 (1993); *In the Interest of N.N.E.*, 752 N.W.2d 1 (2008)



Social Service Departments Requirements — Indian Child Welfare Act, SB 678* & AB 1325

I. Investigation/Intake Requirements

- A. *Initial inquiry*: Whenever a petition is to be or has been filed for a child under WIC § 300, the social worker must ask, whether the child is in placement or at home, the child, parents, guardians, Indian custodians, and relatives whether the child may have Indian ancestry. Do not assume a child may or may not have Indian ancestry based on appearance, family name, or generalizations. You must conduct inquiry with every child that is involved in dependency. (WIC, § 224.3(a); CRC 5.481(a).)
- B. *Further inquiry*: If, as a result of this inquiry or from any other source, you have reason to know the child is an Indian child, ask more questions to learn about the child's Indian heritage. Ask family members, the Bureau of Indian Affairs (BIA), and the tribe. Locate the tribal contact information if the tribe is known. (WIC, § 224.3(c); CRC 5.481(a)(4).)
- C. *When do I have "reason to know"?*:
1. Anyone with an interest in the child provides you with information suggesting the child is an Indian child;
 2. If the child, the child's parents, or an Indian custodian live in a predominately Indian community; or
 3. The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service. (WIC, § 224.3(b); CRC 5.481(a)(5).)
- D. *Document inquiry on Juvenile Dependency Petition (form JV-100 or form JV-110) and Indian Child Inquiry Attachment (form ICWA-010(A))*:
1. Item 2 on JV-100, and JV-110 requires you to have conducted an initial inquiry and further inquiry if it is warranted.
 2. You are responsible for documenting your investigation on ICWA-010(A). If the child is an Indian child, you and the court will need to take specific steps to prevent the breakup of the child's Indian family.
 3. You are responsible for ensuring that both parents and the Indian custodian or guardian, if any, complete and return *Parental Notification of Indian Status* (form ICWA-020).
- E. *Document active efforts if child taken into custody*: If you have reason to believe the child is an Indian child, you must find resources and services that are culturally specific to the Indian child's family. These resources and services are the *active efforts* that you must document to show that you are actively trying to prevent the breakup of the child's Indian family. Just as you would document *reasonable efforts* in non-ICWA cases, you must also document these active efforts in the report before the child can be removed from his or her parent or Indian custodian. You can find resources to help fulfill the active efforts requirement at <http://www.courts.ca.gov/5807.htm> . (ICWA § 1912(d); WIC, §§ 361; 727.4(d)(5)(D); CRC 5.484(c).) If the child is being removed you must also consult with the child's tribe on placement and comply with the ICWA placement preferences. (ICWA § 1915 (b); WIC § 361.31; CRC 5.482(g) & 5.484 (b))

II. ICWA Notice Requirements

- A. If you have information suggesting the child is an Indian child, you must send a *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the child's parents or guardians, Indian custodian (if any), tribe(s) with which the child may be affiliated; and the Sacramento Office of the

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

BIA; or the Secretary of the Interior as soon as possible. While you are not required to delay the detention (see WIC § 224.2(d)) hearing to provide such notice, notice should never the less be sent as early as possible and proof of notice must be filed with the court within 10 days after the filing of the petition (CRC 5.482 (a)(2)(B). Early notice to and contact with the child's tribe is essential to ICWA compliance. Further it will allow a more speedy determination of the child's tribal status and early identification of tribal resources that may be available to meet the active efforts requirements of ICWA. (ICWA § 1912(a); WIC, § 224.2; CRC 5.481(b).)

- B. *What to send:* Use mandatory form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, including attachments and a copy of the child's birth certificate where available, the petition and the report prepared for the hearing.
- C. *Where and whom to notice:* Notice must be sent to the child's parents, including adoptive parents, guardian, Indian custodian (if any), the child's potential tribe(s), and either the Sacramento Area Director of the BIA if you do not know the child's tribe or the Secretary of the Interior if you do know (see F below).
- D. *How to send notice:* Notice must be sent via registered/certified mail, return receipt requested. If a tribe intervenes in the case, you may thereafter send notice to it in the same manner as to other parties.
- E. *Where to send tribal notice:* When sending notices to the child's tribe, they must be addressed to the tribal chairperson or other tribal representative designated for receipt of ICWA notice. The list of designated agents for service of ICWA notice may be found at: <http://www.bia.gov/cs/groups/public/documents/text/idc012540.pdf> The tribal information list maintained by the California State Department of Social Services can be found at: <http://www.childsworld.ca.gov/res/pdf/CDSSTribes.pdf> Send notice to all tribes of which the child may be a member or eligible for membership until the court makes a determination as to which tribe is the child's tribe, after which notice need be sent only to the tribe determined to be the Indian child's tribe. (WIC, §§ 224.2, 224.3; CRC 5.481(b).)
- F. If you know the child's tribe (i.e., child is an enrolled member), notice does not need to go to other tribes, and you do not need to send notice to the regional BIA office, but you must send a copy of the notice to the Secretary of the Interior.
- G. *Purpose of notice:* The purpose of notice is to let the tribe know of the involuntary child custody proceeding potentially involving one of its children and to allow it to investigate to determine whether the child is a tribal member or eligible for membership and whether or not to participate in the proceedings. Therefore, it is important that the information you provide is complete and accurate. If it is not, your notice may be held to be inadequate. (ICWA § 1912(a); WIC, § 224.2; CRC 5.481(b).)
- H. *How to prove notice:* File with the court copies of all notices, with the certified mail receipts, any return receipts, and all responses from a tribe or the BIA.

NOTE: It is not sufficient for you to state on the report that notice was sent. The green return receipt must be in the court file, with a copy in the social worker's file.

III. Detention Report Requirements for Indian Child (ICWA §§ 1912(d), 1915 (b); WIC, §§ 361.31, 361.7, 636(c)(2); CRC 5.484(b) & (c).)

- A. Provide documentation to support your inquiry concerning possible Indian ancestry and results of inquiry.
- B. Provide documentation to support the required court findings regarding reasonable efforts and active efforts to prevent removal.
- C. Provide documentation concerning consultation with the tribe concerning placement and how the placement fits within the ICWA placement preferences.

IV. Jurisdiction Report/Hearing Requirements for Indian Child

- A. Provide documentation to support your inquiry concerning possible Indian ancestry and results of inquiry.
- B. Provide documentation to support the required court findings regarding reasonable efforts and active efforts to prevent removal.
- C. Provide notice in accordance with section II above.
- D. *Timing:* No hearing can be held until 10 days after receipt of notice by the tribe and others entitled to ICWA notice. The parents, Indian custodian

(if any), and tribe are entitled to an additional 20 days to prepare for the hearing on request. (ICWA § 1912 (a); WIC, § 224.2(d); CRC 5.482(a).)

V. Disposition Report Requirements If an Indian Child Is Involved and It Is Probable the Child Will Be Entering or Is Already in Foster Care

- A. Document any further inquiry efforts you have made to determine if an Indian child is involved by completing and attaching ICWA-010(A) to the disposition report.
- B. Prepare a case plan within 60 days of removal or by the date of the dispositional hearing, whichever occurs first, that includes resources and services that are remedial, rehabilitative, and culturally specific to the Indian child's family and are designed to prevent the breakup of the Indian family. (ICWA § 1912(d); WIC, § 361.7; CRC 5.484(c)). In preparing this case plan you must solicit and integrate the input of the child's identified Indian tribe. (CRC 5.690(c)) You must also discuss with the child's identified Indian tribe whether tribal customary adoption as defined in section 366.24 is an appropriate permanent plan for the child if reunification is unsuccessful and include the contents of this discussion in your report. (WIC § 358.1; 361.5(g)(1)(G))
- C. Comply with ICWA notice requirements discussed in section II above.
- D. If you know the child's tribe, you should consult with the tribe in developing the case plan and determining what services are appropriate for the parents and the child, and in finding an appropriate placement for the child.
- E. Obtain a qualified expert witness (QEW) meeting the requirements of section VI(B) below to testify at the hearing.
- F. Make efforts to obtain a placement that complies with the ICWA placement preferences set out in section VI(D) and (E) below and document those efforts in your dispositional report.
- G. Document in the report your active efforts and reasonable efforts and make recommended legal findings for the court to adopt. (ICWA § 1912(d); WIC, § 361.7.)
- H. Ensure that you have all the evidence necessary to support the disposition that you are recommending. In particular ensure that any foster-care placement recommendation complies with the requirements for ICWA foster placement set out in section VI below.

VI. Foster Placement Requirements

- A. *ICWA preferences*: The foster-care placement of an Indian child requires placement in accordance with the ICWA preferences and must meet the heightened ICWA evidentiary standards.
- B. *Evidentiary standard*: Provide proof by clear and convincing evidence, including the testimony of at least one qualified expert witness (QEW), that taking into account the prevailing social and cultural standards of the child's tribe, continued custody of the child with his or her parent, or Indian custodian is likely to result in serious emotional or physical damage to the child. (ICWA § 1912(e); WIC, §§ 361, 361.31, 361.7(c); CRC 5.484(a).)
- C. *Who can serve as QEW?* A person knowledgeable in prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child-rearing practices. Likely persons include a member of the child's tribe, an expert with substantial experience in delivery of services to Indians (e.g., social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, historian, or elder), or other professional. (WIC § 224.6)

NOTE: An employee of your social services department cannot serve as a QEW. (ICWA § 1912 (e); WIC, § 224.6; CRC 5.484(a).)

- D. *Placement preferences*: As with any child, the placement should be the least restrictive setting that most approximates a family and in which the child's special needs, if any, may be met. Unless the child's tribe has by resolution specified a different preference, preference must be given in order of priority to placement with (i) a member of the Indian child's extended family; (ii) a foster home licensed, approved, or specified by the Indian child's tribe; (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (iv) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs. If no placement is available that meets these preferences, efforts must be made to place the child with a family committed to preserving the child's family

ties and tribal relations. (ICWA § 1915(b); WIC, § 361.31; CRC 5.484(b).)

- E. *Consultation with tribe*: When you know the child's tribe, you must consult with the tribe and make use of tribal services when formulating your placement recommendation. (WIC § 361.31(g))
- F. *Documentation of efforts regarding placement*: The court must make a finding that the placement accords with ICWA. You must document in your report what efforts were made to find a placement that meets the preferences of ICWA. These efforts would include contacts with members of the child's extended family, contacts with the child's tribe seeking input and resources for placement, and contacts with other relevant Indian organizations (see I(E) for resources). These efforts should be made and documented each time there is a change in the Indian child's placement. (ICWA § 1916(b); WIC, § 361.31; CRC 5.482(f).)

VII Status Review, Permanency Planning, and Postpermanency Planning Hearing Requirements

- A. Document further inquiry efforts you have made to determine if an Indian child is involved by completing and attaching ICWA-010(A) to the report.
- B. Provide notice in accordance with section II above.
- C. Consult with tribe, specifically including a discussion of whether tribal customary adoption as defined in section 366.24 is an appropriate permanent plan for the child if reunification is unsuccessful and include the contents of this discussion in your report. (WIC § 358.1; 361.5(g)(1)(G)) .
- D. Prepare and file a report with recommended legal findings and orders supported by evidence of continued compliance with:
 - 1. Reasonable and active efforts requirement discussed in I(E) above; and
 - 2. Efforts to find a placement that complies with ICWA preferences as discussed in VI(D) above.

VIII. Termination of Parental Rights Requirements (WIC, §§ 366.26, 727.31)

- A. You must provide evidence supported by the testimony of at least one QEW **beyond a reasonable doubt** that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- B. You must consult with the tribe in formulating the permanent plan for the child, specifically including a discussion of whether tribal customary adoption as defined in section 366.24 is an appropriate permanent plan for the child if reunification is unsuccessful and include the contents of this discussion in your report. (WIC § 358.1; 361.5(g)(1)(G)) .
- C. Prepare and file a report with recommended legal findings and orders supported by evidence of continued compliance with:
 - 1. Reasonable efforts and active efforts requirements discussed in I(E) above (ICWA § 1912(d); WIC, §§ 361.7, 366.26(c)(2)(B); CRC 5.485(a).); and
 - 2. Compliance with adoptive preferences of ICWA if the recommended permanent plan for the child is adoption.Absent good cause to the contrary, for any adoptive placement of an Indian child, preference of placement shall be given in priority order to (i) a member of the child's extended family, (ii) other members of the Indian child's tribe, or (iii) other Indian families. (ICWA § 1915(a); WIC, § 727.3.)
- D. *Good cause not to terminate parental rights*: State law now recognizes that at the option of the tribe, tribal customary adoption is an appropriate permanent plan. California law also recognizes other exceptions to termination of parental rights (TPR) for tribal children. Many tribal cultures do not believe in TPR. Accordingly, it is good cause not to terminate if TPR would interfere with connection to tribal community or membership or the child's tribe has identified guardianship, long-term foster care, or another permanent plan as the preferred plan for the child. (WIC, § 366.26(c)(2)(B)); CRC 5.485(b).)



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; Guidelines¹ 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.

¹ 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

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

Recommended ICWA Findings and Orders

- (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:

Recommended ICWA Findings and Orders

- (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.

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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.



JUDICIAL COUNCIL OF CALIFORNIA

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

ICWA Information Sheet: Tribal participation in State court proceedings governed by ICWA.

Under ICWA and corresponding state law, an Indian child's tribe must receive notice of any state court proceedings governed by ICWA involving an Indian child. These proceedings include dependency proceedings, some delinquency proceedings, some family code proceedings and probate guardianship proceedings concerning an Indian child. (see 25 USC § 1903; Fam. Code §§ 170, 177, 3041, Prob. Code § 1459.5, WIC §§ 224, 224.1 CRC 5.480 & 7.1015) Federal and state law mandate and acknowledge a number of substantive and procedural rights of an Indian child's tribe in such state court proceedings, including a right to participate in various ways and an absolute right to intervene in such proceedings "at any point".

Rights if a tribe chooses not to intervene:

An Indian child's tribe is not required to formally intervene in proceedings. If the tribe acknowledges the child, all of ICWA's substantive requirements apply even if the tribe does not intervene. A non-intervening tribe must continue to receive notice of all court hearings involving the child. The tribe must be consulted with respect to the placement of the child. (CRC 5.482(g)) The tribe must be consulted with respect to case planning for both the Indian parents and the Indian child and those case plans must use the available resources of the tribe, extended family members, other Indian service agencies and individual Indian caregivers. (CRC 5.484 (c); CRC 5.690 (c); WIC § 361.7)

Whether or not the tribe intervenes, a representative of the Indian child's tribe is entitled to be present at all court proceedings involving the Indian child (CRC 5.530 (B) (7)) and may address the court, receive notice of hearings, examine all court documents relating to the dependency case, submit written reports and recommendations to the court, and perform other duties and responsibilities as requested or approved by the court. (CRC 5.534 (i))

Right of Intervention:

An Indian child's tribe may intervene, orally or in writing, at any point in the proceedings and may, but is not required to, file with the court the *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* (form ICWA-040) to give notice of their intent to intervene. (CRC rule 5.482 (e); WIC § 224.4; 25 USC § 1911 (c))

The juvenile court has no discretion to deny a tribe's request to intervene. (*In re Desiree F.* (2000) 99 Cal.Rptr.2d 688, 83 Cal.App.4th 460)

Rights of the Intervening Tribe:

A tribe, as an intervening party, is entitled to all rights afforded to any party in a proceeding, including the right to sit at counsel table, the right to examine witnesses, and the right to be given copies of documents. See CCP §387; see also CRC 5.482(e) and Judicial Council form ICWA-040.

Who May Appear on Behalf of the Tribe:

The tribe may choose to be represented by an attorney at the tribe's expense, but the tribe may also designate any person to represent them in court, and this representative must be given the same rights and courtesies as the attorneys involved. (CJER ICWA Bench Handbook, 2013 at page 32).

The court may not limit the tribe's ability to participate effectively in the case if the tribe chooses to be represented by a non-attorney.¹ States' laws regulating attorneys and the practice of law cannot interfere with or burden the federally protected right of the tribe to participate in the proceedings.²

California Rule of Court, rule 5.534 specifically addresses this issue:

(i) Tribal representatives (25 U.S.C. §§ 1911, 1931-1934)

The tribe of an Indian child is entitled to intervene as a party at any stage of a dependency proceeding concerning the Indian child.

(1) The tribe may appear by counsel or by a representative of the tribe designated by the tribe to intervene on its behalf.

The California Rules of the Court, Rule 5.534(i)(1) permits intervention by an attorney or by a representative and makes no distinction between the rights granted to each respectively.

¹ *State v. Jennifer M.*, 277 Neb. 1023, 1024 (2009)

² *State ex rel Juvenile Department of Lane County v. Shuey*, 119 Ore.App. 185 (1993); *In the Interest of N.N.E.*, 752 N.W.2d 1 (2008)

Quick Reference Sheet for State Agency Personnel in Involuntary Proceedings*



U.S. Department of the Interior, Bureau of Indian Affairs Final Rule: Indian Child Custody Proceedings 25 CFR 23

Inquiry. The court will ask at the beginning of each child-custody proceeding:

Do you know, or is there a reason to know, the child is an “Indian child” under the Indian Child Welfare Act (ICWA)?

An “Indian child” is:

- A member of a federally recognized Tribe or
- Eligible for membership in a federally recognized Tribe and has a biological parent who is a member.

Indications of “reason to know” include—

- Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child;
- The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village;
- The child is, or has been, a ward of Tribal court; or
- Either parent or the child has an ID indicating Tribal membership.

Whether a child is an “Indian child” does not consider factors outside the statutory definition, such as:

- Participation of the parents or the Indian child in Tribal activities;
- Relationship between the Indian child and his or her parents;
- Whether the parent ever had custody of the child, or
- The Indian child’s blood quantum.

Pending verification. The court will treat the child as an Indian child, unless and until it is determined on the record that the child is not an “Indian child” under the Indian Child Welfare Act (ICWA).

Due diligence to identify “Indian child’s Tribe” and verify membership/eligibility. Use 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 a member **or** a biological parent is a member and the child is eligible for membership.

Inquire as to domicile and residence. The court will look at whether the Indian child’s domicile or residence is on a reservation **or** the child is a ward of Tribal court to determine whether the Indian child’s Tribe has exclusive jurisdiction.

Use and document *active efforts* to prevent the breakup of the family. You must use active efforts to prevent the breakup of the family. Before ordering an involuntary foster care placement or termination of parental rights (TPR), the court must conclude that active efforts have been made to prevent the breakup of the Indian family and those efforts have been unsuccessful. The court will require active efforts to be documented in detail in the record.

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. See 25 CFR § 23.2 for the more expansive definition and examples.

If an emergency removal under State law is necessary. An emergency removal or placement is any removal/placement of an Indian child under State law without the full suite of ICWA protections, regardless of the label used for the removal or placement, and is permitted to prevent “imminent physical damage or harm” to the child. Any emergency removal or placement of an Indian child:

- **Must terminate** immediately when the removal or placement is no longer necessary to prevent “imminent physical damage or harm” to the child and
- **Cannot last more than 30 days** unless the court makes certain determinations.

An emergency proceeding can be terminated by one or more of the following actions:

- (1) Initiation of a child-custody proceeding subject to the provisions of ICWA (e.g., providing notice);
- (2) Restoring the child to the parent or Indian custodian; or
- (3) The court transfers of the child to the jurisdiction of the appropriate Indian Tribe.

Notice. Provide clear and understandable notice to the parents (and/or Indian custodian, if any) and Tribe, by registered or certified mail, return receipt requested, of the involuntary proceeding, and maintain proof that the notice was given (i.e., the return receipts and copies of notice). The court will not hold a foster-care-placement or TPR proceeding until at least **10 days after receipt** of the notice of that particular proceeding (with extensions allowed at option of parent or Tribe).

Standards of Evidence. The court will order foster-care placement or TPR only if there is:

- **Clear and convincing evidence** (for foster-care placement) or **evidence beyond a reasonable doubt** (for TPR),
- Including the testimony of qualified expert witness(es),
- That the child's continued custody by the child's parent or Indian custodian is likely to result in "serious emotional or physical damage" to the child.

The evidence must show a **causal relationship** between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

Without a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself meet the standard of evidence.

The **qualified expert witness** may not be the social worker regularly assigned to the Indian child. The Indian child's Tribe may designate an individual as a qualified expert witness and you may seek the Tribe's or BIA's assistance in identifying a qualified expert witness.

Placement Preferences. Seek to identify placements that meet ICWA's placement preferences (or the Indian child's Tribe's placement preferences established by resolution, if applicable). The court will apply the placement preferences in any preadoptive, adoptive, or foster-care placement of an Indian child.

**ICWA's top preferred placement is a member of the Indian child's extended family.
For the remaining preferences, see 25 U.S.C. 1915 or 25 CFR §§ 23.129-131.**

The court will allow for deviations of the placement preferences only for *good cause* described on the record.

Good cause should be shown by clear and convincing evidence and based on one or more of the considerations at § 23.132(c). Note that a prerequisite to finding good cause based on the *unavailability* of a suitable preferred placement is that a diligent search for suitable preferred placements must have been conducted. The standards for determining whether a placement is *unavailable* must conform to the prevailing social and cultural standards of the Indian community.

A placement may not depart from the preferences:

- Based on the socioeconomic status of any placement relative to another placement
- Based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

*Any proceeding that is not "voluntary" under the regulations is involuntary. A proceeding is "voluntary" only if either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.



JUDICIAL COUNCIL OF CALIFORNIA

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

ICWA Information Sheet: Active Efforts and Resources

Why Are Active Efforts Important?

Active efforts are described in the Indian Child Welfare Act (ICWA) as important steps in providing remedial services and rehabilitative programs to prevent the breakup of the Indian family. Active efforts should be thoroughly documented and proven in court proceedings when involuntary foster care or termination of parental rights occurs.

Often, state or county agencies or assimilation programs established by the federal government entailed removal of Indian children from their tribal communities based on poverty and a lack of knowledge or understanding about cultural practices and the importance of connection to the tribal community. Indian children were then placed in non-Indian homes or institutional environments. These practices were based on the belief that Indian children raised in non-Indian environments would be better cared for or assimilated into American society. Over the years, these removal procedures created an overrepresentation of Indian children in out-of-home care.

To address the disparate treatment and prevent the continued breakup of Indian families, Congress enacted the Indian Child Welfare Act in 1978.¹ For more information on the historical factors leading up to the passage of ICWA, please see the *American Indian Policy Review Commission Final Report* at <https://files.eric.ed.gov/fulltext/ED164229.pdf>.

What Is the Legal Definition of Active Efforts?

Newly revised ICWA regulations were published in June 2016 by the Bureau of Indian Affairs (BIA).² In December 2016, ICWA guidelines were released to provide additional information regarding ICWA compliance.³

¹ See Indian Child Welfare, 25 U.S.C. §§ 1901–1963, www.courts.ca.gov/documents/IIB.pdf.

² See Indian Child Welfare Act, 25 e-C.F.R. §§ 23.1–23.144 (2018), www.ecfr.gov.

³ U.S. Department of the Interior, *Guidelines for Implementing the Indian Child Welfare Act* (ICWA Guidelines; December 2016), www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf.

Federal Definition

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. When an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan, including accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case.⁴ For additional citations on providing active efforts, see subdivision (d) of section 1912 of title 25 of the United States Code, Family Code section 177(a), Welfare and Institutions Code section 361.7, and rule 5.484(c) of the California Rules of Court.

Active Efforts Emergency Situations

§ 23.113 What are the standards for emergency proceedings involving an Indian child?

...

- (e) An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:
- (1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
 - (2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and
 - (3) It has not been possible to initiate a "child-custody proceeding" as defined in § 23.2.⁵
- (25 C.F.R. § 23.113.)

The ICWA guidelines recommend that "[s]tate agencies work with Tribes, parents, and other parties as soon as possible, even in an emergency situation, to begin providing active efforts to reunite the family."⁶ An example of an emergency situation is when a crime is committed in which both parents are arrested, no family is in the home at the time of arrest, and the police notify the on-call emergency child welfare worker to bring the children to an emergency shelter. The child welfare worker arrives, discovers one or both of the parents are tribal members, and the parents have a case active in that county's social services family maintenance unit. The child welfare worker reaches out to the tribal representative to work together in locating a family or tribal member to provide temporary foster care immediately.

⁴ See Definitions, 25 e-C.F.R. § 23.2 (2018).

⁵ ICWA Guidelines, § C.5, Outer limit on length of emergency removal, p. 27.

⁶ *Id.*, § C.8, Active efforts in emergency situations, p. 29.

What Is the Difference Between Reasonable Efforts and Active Efforts?

When ICWA applies to child-custody proceedings, the agency involved must provide active efforts to assist the Indian family in remaining together. Reasonable efforts are insufficient. For a clearer understanding of reasonable and active efforts, see the chart below.

Reasonable Efforts	Active Efforts
Choosing standard items for the case plan	Working with the tribal representative and parents to identify goals for case plan and resources
Giving the parents a list of parenting classes	Going over the list of parenting classes with the parents, locating a culturally appropriate class, and assisting the parents in signing up for classes that their schedules allow them to attend
Identifying general counseling one time per week in the case plan	Locating culturally appropriate behavioral health resources; accompanying the parents, child, and/or family to the intake appointment; and having regular contact with the service provider
Documenting that the child is eligible for enrollment	Taking the necessary steps to secure tribal membership for a child if the child is eligible for membership in a tribe (Cal. Rules of Court, rule 5.484(c)), including contacting the tribal representative to find out how to get the child enrolled in the tribe and following the procedures of that tribe to get the child enrolled
Locating a standard substance abuse treatment program	Locating a culturally appropriate substance abuse treatment program and identifying when the child can visit or stay with the parent in the program
Placing child in a frequently used non-Indian foster home	Using ICWA placement preferences properly for the child's temporary home, beginning with contacting the family and tribe to begin identifying a home

Tip: If you work for a county agency, your agency may want to consider contracting with a genealogist to assist with tribal enrollment procedures for your clients. For additional information about working with a genealogist, please contact Vida Castaneda, Senior Analyst, Tribal/State Programs Unit at vida.castaneda@jud.ca.gov or 415-865-7874.

What is the Required Evidence for Active Efforts?

Evidentiary Requirements for Removal or Termination of Parental Rights

According to 25 Code of Federal Regulations part 23.121(c) (2018), “evidence must show a causal relationship between . . . custody [and] . . . serious emotional or physical harm.⁷ Only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself

⁷ See 25 e-C.F.R., § 23.121 (2018).

constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.⁸

In any child custody proceeding listed in rule 5.480 of the California Rules of Court, the court may not order placement of an Indian child unless it finds by clear and convincing evidence that continued custody with the parent or Indian custodian is likely to cause the Indian child serious emotional or physical damage and it considers evidence regarding prevailing social and cultural standards of the child's tribe, including that tribe's family organization and child-rearing practices.

(1) Testimony by a "qualified expert witness," as defined in Welfare and Institutions Code section 224.6, Family Code section 177(a), and Probate Code section 1459.5(b), is required before a court orders a child placed in foster care or terminates parental rights.

(2) Stipulation by the parent, Indian custodian, or tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the person or tribe has been fully advised of the requirements of the Indian Child Welfare Act and has knowingly, intelligently, and voluntarily waived them. Any such stipulation must be agreed to in writing.

(3) Failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of Welfare and Institutions Code section 361, will not support an order for placement absent the finding that continued custody with the parent or Indian custodian is likely to cause serious emotional or physical damage.⁹

(Cal. Rules of Court, rule 5.484(a)(1)–(3).)

Documenting Active Efforts

On any ICWA case, the documentation of the active efforts to prevent the breakup of the Indian family must be clear and thorough. According to regulation 23.120(b), "[a]ctive efforts must be documented in detail in the record."¹⁰ This requirement is to ensure that the judicial officer can make the proper legal findings and orders and that the qualified expert witness can provide an accurate assessment from the reviewed written documentation provided and can prevent the potential of appeal. The social worker, probation officer, or petitioner is responsible for providing and documenting active efforts.

⁸ *Id.*, § 23.121(d) (2018).

⁹ Cal. Rules of Court, rule 5.484 (Placement of an Indian child), www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_484.

¹⁰ See Adjudication of Involuntary Proceedings, 25 e-C.F.R., § 23.120 (2018).

What Resources Are Available for American Indian/Alaska Native Families?

Many services are available for American Indian/Alaska Native individuals and families. These services are often free of charge and located within your region. Here are some examples of the different types of resources:

- ❖ Medical clinics
- ❖ Dental clinics
- ❖ Behavioral health programs
- ❖ Youth services
- ❖ Tribal CASA
- ❖ Substance abuse programs
- ❖ Domestic violence services
- ❖ Indian education programs

If you are interested in a resource outside your county, you may contact the resource agency directly to find out if it works with children and families outside the county area.

Please visit our resources and services database for more information about locating services in specific areas or topic searches: www.courts.ca.gov/5807.htm.

How Does Someone Qualify for Resources Available to American Indian/Alaska Native Individuals or Families?

In California, if you are an enrolled member of a federally recognized tribe or listed on the California Judgment Fund Rolls or a descendant of a person listed on the California Judgment Fund Rolls, you may be able to qualify for services available to American Indian/Alaska Native individuals. If you qualify, you could potentially use services such as Indian education services, behavioral health resources, or medical, dental, Tribal TANF, or substance abuse programs. The intake worker or representative for the resources you are interested in using will be able to tell you if you can access these resources. Resources available to American Indian/Alaska Native families, whether in an urban or a rural environment, are often at no cost or are charged on a sliding scale.

Additional References

If you are interested in tracing your ancestry, you can view these helpful resources:

- ❖ California Indian Legal Services, *How do I trace my California Indian Ancestry?* (2014), www.calindian.org/wp-content/uploads/2015/09/SelfHelpTracingCAIndianAncestry.pdf
- ❖ Bureau of Indian Affairs, Genealogy section (as of July 2018), www.bia.gov/bia/ois/tgs/genealogy

To view reference sheets on the following topics, please visit the web addresses provided:

- ❖ Active efforts, provided by the BIA:
www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-041405.pdf
- ❖ Active efforts, provided by Judge Leonard P. Edwards:
www.courts.ca.gov/documents/BTB_23_5N_5.pdf
- ❖ Dependency: www.courts.ca.gov/documents/ICWA-SSDRequirements.pdf
- ❖ Delinquency: www.courts.ca.gov/documents/ICWAProbationRequirements.pdf
- ❖ Family: www.courts.ca.gov/documents/ICWAFamilyCtsRequirements.pdf
- ❖ Probate: www.courts.ca.gov/documents/ICWAProbateCourtRequirements.pdf

Active Efforts



U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR § 23.2, § 23.120

What are active efforts?

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.

What must active efforts involve?

Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent(s) or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

How should active efforts be provided?

To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe.

Are active efforts tailored to each case?

Yes, active efforts are to be tailored to the facts and circumstances of the case.

When are active efforts required?

The active efforts requirement applies in any foster-care or termination-of-parental-rights proceeding involving an "Indian child" (see 25 CFR 23). The court must conclude, prior to ordering an involuntary foster-care placement or termination of parental rights, that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

Must active efforts be documented?

Yes, the court will require active efforts to be documented in detail in the record.

Active efforts may include, for example:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- (3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
- (5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
- (6) Taking steps to keep siblings together whenever possible;
- (7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
- (8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
- (9) Monitoring progress and participation in services;
- (10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
- (11) Providing post-reunification services and monitoring.

Quick Reference Sheet for Voluntary Proceedings



U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR 23

Voluntary proceedings. A proceeding is “voluntary” only if either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to the placement for the Indian child, or if the proceeding is for voluntary termination of parental rights. The Indian Child Welfare Act (ICWA) and the regulations include provisions that apply to voluntary proceedings (highlighted by this guide).

The only voluntary placement to which ICWA does **not** apply to is a voluntary placement where the parent or Indian custodian can regain custody of the child **upon demand** – meaning simply upon verbal request, without any formalities or contingencies.

Inquiry. At the outset of the proceeding, the court will ask whether you know, or if there is a reason to know, the child is an “Indian child” under ICWA.

An “**Indian child**” is:

- A member of a federally recognized Tribe or
- Eligible for membership in a federally recognized Tribe and has a biological parent who is a member.

Indications of “reason to know” include—

- Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child;
- The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village;
- The child is, or has been, a ward of Tribal court; or
- Either parent or the child has an ID indicating Tribal membership.

Whether a child is an “Indian child” does not consider factors outside the definition, such as:

- Participation of the parents or the Indian child in Tribal activities;
- Relationship between the Indian child and his or her parents;
- Whether the parent ever had custody of the child, or
- The Indian child’s blood quantum.

Pending verification. If there is a reason to know the child is an Indian child, the court will treat the child as an Indian child, unless and until it is determined on the record that the child is not an “Indian child” under ICWA.

Due diligence to identify “Indian child’s Tribe” and verify membership/eligibility. Use 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 a member **or** a biological parent is a member and the child is eligible for membership.

Effect of a request for anonymity. 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.” If the consenting parent provides a written request for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal and the Tribe receiving information related to this inquiry must keep documents and information confidential.

Inquire as to domicile and residence. The court will look at whether the Indian child's domicile or residence is on a reservation **or** the child is a ward of Tribal court to determine whether the Indian child's Tribe has exclusive jurisdiction.

Notice. ICWA and the regulations do not necessarily require notice to the other parent or Tribe, but the Department recommends notice to promote compliance with the placement preferences and stability for the Indian child.

Placement Preferences. Seek to identify placements that meet ICWA's placement preferences (or the Indian child's Tribe's placement preferences established by resolution, if applicable). The court will apply the placement preferences in any preadoptive, adoptive, or foster-care placement of an Indian child.

**ICWA's top preferred placement is a member of the Indian child's extended family.
For the remaining preferences, see 25 U.S.C. 1915 or 25 CFR §§ 23.129-131.**

The court will allow for deviations of the placement preferences only for *good cause* described on the record. Good cause should be shown by clear and convincing evidence and based on one or more of the considerations at § 23.132(c). Note that:

- A prerequisite to finding good cause based on the *unavailability* of a suitable preferred placement is that a diligent search for suitable preferred placements must have been conducted. The standards for determining whether a placement is *unavailable* must conform to the prevailing social and cultural standards of the Indian community.
- If the Indian child's parent(s) wants to request a placement that departs from the placement preferences, the parent(s) must attest that they have reviewed the placement options, if any, that comply with the order of preference.

A placement may not depart from the preferences:

- Based on the socioeconomic status of any placement relative to another placement
- Based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

Consent Safeguards. A parent's or Indian custodian's consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing, include the contents listed at § 23.126, and be recorded before a court of competent jurisdiction. Prior to accepting the consent, the court must:

- Explain to the parent or Indian custodian the terms and consequences of the consent in detail; and
- Explain to the parent or Indian custodian the limitations on withdrawal of consent listed in § 23.125(b)(2);
- Certify that the terms and consequences of the consent were explained on the record in detail (in the appropriate language) and were fully understood by the parent or Indian custodian.

A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

Withdrawal of Consent. The rule provides information for how a parent may withdraw consent to a voluntary foster-care placement, voluntary termination of parental rights, and voluntary adoption. See §§ 23.127 - 23.128. For example, a parent or Indian custodian may withdraw consent to an adoption any time prior to entry of the final adoption decree by filing a written document with the court of otherwise testifying before the court. Additional methods of withdrawing consent may be available under State law.

Adult Adoptees' Right to Information. An Indian who has reached age 18 who was the subject of an adoptive placement may apply to the court that entered the final adoption decree for information, and the court must inform such individual of the Tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include Tribal membership, resulting from the individual's Tribal relationship.

CALIFORNIA TRIBAL COURT–STATE COURT FORUM

June 2012

Native American Research Series: Tribal Justice Systems

Introduction

The Tribal/State Programs of the Judicial Council’s Center for Families, Children & the Courts has developed a series of informational abstracts that bring together the available data from various sources on American Indians and Alaskan Natives (AI/AN) nationally, statewide, and tribally specific to California’s AI/AN population. The purpose of these abstracts is to develop and disseminate justice-related information and links to reports to ensure the highest quality of justice and service for California’s AI/AN population. This information is intended for the state judicial branch, tribal justice systems, tribal organizations, state agencies, and local agencies to support effective collaboration and tribal justice development.

Preface

This report will provide a general overview of tribal justice systems in tribes. The majority of California tribes still rely on local courts and law enforcement. However, the past 10 years has seen remarkable growth in both the number of tribal justice agencies, and the services offered.

We would like to extend special thanks to Bill Denke, Chief of the Sycuan Police Department and Chair of the California Tribal Police Chief’s Association, for providing current information on tribal law enforcement agencies in California.

Jurisdictional Issues

As sovereigns, tribes have legal jurisdiction over both their citizens and their lands. According to most recent census data, California is home to more people of Native American/Alaska Native heritage than any other state in the country. There are currently 109 federally recognized Indian tribes in California and 78 entities petitioning for recognition. Tribes in California currently have nearly 100 separate reservations or rancherias. There are also a number of individual Indian trust allotments. These lands constitute “Indian Country,” and a different jurisdictional scheme applies in Indian Country. For Indians and Indian Country there are special rules that govern state and local jurisdiction. There may also be federal and tribal laws that apply.

Please see <http://www.courts.ca.gov/8710.htm> and <http://www.tribal-institute.org/lists/pl280.htm> for more information on jurisdiction in Indian Country.

Tribal Justice Agencies

Law Enforcement

Law enforcement on tribal lands has historically been, and remains, a challenging task for tribal communities. According to the National Congress of American Indians (NCAI):¹

- Police in Indian Country function within a complicated jurisdictional net, answer to multiple authorities, operate with limited resources, and patrol some of the most desolate of territory, often without assistance from partner law enforcement agencies.
- There are only 2,380 Bureau of Indian Affairs and tribal uniformed officers available to serve an estimated 1.4 million Indians covering over 56 million acres of tribal lands in the lower 48 states.
- On tribal lands, 1.3 officers must serve every 1,000 citizens, compared to 2.9 officers per 1,000 citizens in non-Indian communities with populations under 10,000.
- A total of at least 4,290 sworn officers are needed in Indian Country to provide the minimum level of coverage enjoyed by most communities in the United States.
- These departments rarely have more than one officer on duty at any time, and their officers often work without adequate backup.

Law enforcement jurisdiction varies by the location of the offense (on or off reservation land), the status of the parties (the race/ethnicity of the victim and offender), and the nature of the crime (major crime or misdemeanor). In California, a P.L. 280 State, officers who have jurisdiction on reservations include the following:

Tribal Security Officers

These officers are employed by tribes and have security duties on the reservation. They often are given jurisdiction by the tribal government to enforce tribal law and order codes violated by tribal members, and may be granted arrest powers over tribal members and Indians on the reservation only. They have arrest powers only in the capacity of a private citizen.

Tribal Police Officers

These officers are also employed by individual tribal governments and have tribal authorized police and arrest powers over tribal members committing violations of tribal law and order codes committed on reservation property. Currently, most tribal governments require at a minimum, graduation from a formal law enforcement academy.

Federally Deputized Police Officers

These include Bureau of Indian Affairs (BIA) Special Deputy Officers and Tribal Officers Holding Special Law Enforcement Commissions (SLECs). SLEC officers are a hybrid tribal/federal officer, paid by the individual tribal government, but deputized by the BIA as federal law enforcement officers with the same authority as BIA police officers. These officers are federally empowered to enforce

¹ http://tloa.ncai.org/documentlibrary/2011/08/Talking_Circles_Report_Final_Jul11.pdf (as of 6/14/12)

federal laws on and off reservation if a nexus to the reservation exists. These officers may enforce federal laws, and arrest non-Indians for violations of federal laws. In addition, these federal officers may enforce observed violations of federal laws while off the reservation, and conduct investigations off the reservation.

A comparison of data collected for the 2002 Census of Tribal Justice Agencies² and more current information obtained from California Tribal Police Chief's Association shows a pattern of growth in tribal law enforcement across the state.

- In 2002, 20 Tribes (23 percent of California tribes, compared to 53% percent nationally) reported having a Tribal law enforcement agency. In 2012, this has grown to 39 tribes (about 37 percent of California tribes). The remaining tribes rely on some combination of state/local law enforcement.³
- In 2002, 10 agencies employed sworn officers; of these, 5 had a cross-deputization agreement with either the BIA (4) or “neighboring non-tribal authorities” (1). By 2012, this had grown to 17 agencies with sworn officers⁴.
- The number of agencies which operate through a PL 93-638 or self-governance contract (6) has been stable from 2002 to 2012.
- Six tribal agencies had arrest authority over non-Indians in 2002. This has risen to 17 agencies in 2012.

We do not have data that allow us to compare current California figures with tribes outside of California, but data from the 2002 census shows that California tribes rely more heavily on local law enforcement than non-California tribes (see Table 1). This is in part due to California’s status as a “PL-280” state, which cedes Federal law enforcement authority in Indian Country to some states⁵.

² Steven W. Perry, Bureau of Justice Statistics, Census of Tribal Justice Agencies in Indian Country, 2002 (NCJ 205332,) Dec. 2005. <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=543> (as of 9/19/2011). Unless otherwise noted, the data presented in this section are drawn from independent analysis of this survey.

³ Id.

⁴ Four additional tribes are in the process of establishing law enforcement agencies.

⁵ The implications of PL-280 are extremely complex. Please refer to the Tribal Court Clearinghouse web pages (<http://www.tribal-institute.org/lists/pl280.htm>, as of 3/27/12) for further discussion and references.

Table 1
Tribal Law Enforcement Functions – 2002⁶

Which of the following provide law enforcement functions for your tribe?

	California	Non-California
Sworn officers	11%	69%
BIA	7%	39%
State	19%	32%
Local	90%	37%
Tribal Law Enforcement	21%	68%
Traditional Law Enforcement	3%	7%
Game/Fish Wardens	7%	21%

Categories not listed are Village Police/Public Safety, Housing Authority, Casino Security, and "Other". Respondents could select more than one category.

- Among all reporting California tribes, 92 percent refer juvenile cases to county authorities, compared to 55 percent of non-California tribes. Eleven percent of California tribes referred juvenile cases to tribal authorities, compared to 56 percent of non-California tribes (see Table 2).

Table 2
Juvenile Justice – 2002

For Juvenile offenses committed on your tribal land, to which justice authorities may cases be referred?

	California	Non-California
Tribal justice authorities	11%	56%
County justice authorities	92%	55%
State justice authorities	10%	21%
Federal justice authorities	3%	24%

Respondents could select more than one category.

- Five tribal agencies in California operated a detention facility of some sort. Most (85 percent) relay largely on county facilities for all or some of their detention functions.
- Eighty-five percent of California tribal agencies, including all agencies employing sworn officers, recorded the number and types of crime incidents manually and/or electronically. Three tribes shared statistics with local or state agencies, and six shared statistics with federal agencies (FBI, BIA, or both).

Access to Criminal History/Justice Statistics

- Seventy-five percent of California tribes recorded crime incidents on the reservation manually and/or electronically.

⁶ Steven W. Perry, Bureau of Justice Statistics, Census of Tribal Justice Agencies in Indian Country, 2002 (NCJ 205332,) Dec. 2005. <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=543> (as of 9/19/2011)

- Over half of the tribes had access to the National Criminal Information Center (NCIC).
- An estimated 54 tribes submitted information on tribal sex offenders to the National Sex Offender Registry (NSOR).
- Less than 12 percent of the tribes reported their justice agencies were electronically networked with other justice agencies on or off the reservation.
- Fourteen tribes routinely shared crime statistics with neighboring local governments, the State, or the FBI.
- Tribal law enforcement officers do not have access to the California Law Enforcement Telecommunication System (CLETS) unless they gain access through the National Law Enforcement Telecommunication System (NLETS).
- Tribal law enforcement officers have access to NLETS if they are Special Law Enforcement Commissions (SLEC) officers.⁷ At this time, 7 California agencies have SLEC officers⁸.
- California tribes have access to the California Courts Protective Order Registry (CCPOR).

Tribal Courts⁹

What is a Tribal Court?

Tribal courts are formalized systems established by American Indian and Alaska Native tribes for resolving civil, criminal and other legal matters. There is a great deal of variation in the types of tribal courts and how they apply tribal laws. Some tribal courts resemble Western-style courts in that written laws and court procedures are applied. Others use traditional Native means of resolving disputes, such as peacemaking, elders' councils, and sentencing circles. Some tribes have both types of courts.

There are also a small number of Courts of Indian Offenses. These are courts (also known as “CFR courts”) established by the Bureau of Indian Affairs for the benefit of tribes who do not operate their own tribal court.

⁷ Authority for the issuance of Special Law Enforcement Commissions is based upon Title 25, United States Code, Section 2804 (Pub. L. 101-379), 25 C.F.R. Part 12), and the Tribal Law and Order Act (Pub. L. 111-211). Under the Tribal Law and Order Act (TLOA) tribal agencies do have access to the National Law Enforcement Telecommunications System (NLETS).

⁸ An additional 4 tribal law enforcement departments are in the process of obtaining SLECs.

⁹ Steven W. Perry, Bureau of Justice Statistics, *Census of Tribal Justice Agencies in Indian Country, 2002* (NCJ 205332, Dec. 2005).

Table 3
Tribal Justice Systems - 2002

	California N=89	Non-California N=225
Any Tribal Court System	9 (10%)	180 (80%)
<i>Tribal courts</i>	9	167
<i>Appellate courts</i>	4	99
<i>Circuit rider system</i>	0	2
<i>Traditional Methods/Forums</i>	2	37
<i>Inter-tribal court system</i>	1	14
<i>Other</i>	1	16

- In 2002, 9 tribes¹⁰ of 89 participating California tribes (10 percent) reported having a tribal court, compared to 180 of 225 reporting (59 percent) of non-California tribes. About 84% of California’s reporting tribes relied solely on state courts for services.
- In 2012, 39 tribes of 109 federally recognized California tribes (36 percent) either have a tribal court or access to a tribal court through an inter-tribal court coalition.
 - The Intertribal Court of Northern California (ICNC) serves 7 tribes.
 - The Intertribal Court of Southern California (ICSC) serves 12 tribes.
 - The Northern California Intertribal Court System (NCICS) serves 4 tribes.
- Most of these courts heard civil cases (7) and juvenile/family law cases (6). About half (4) heard domestic violence protective orders.
- Four of the tribal courts offered some kind of intermediate sanctions for adult offenders (e.g., drug/alcohol treatment, fines/restitution, counseling).
- Six tribes offered similar intermediate sanctions for juvenile offenders.
- None of the tribes maintained a probation function in 2002.
- The responding tribal courts report staffing levels of one to nine full time staff.

¹⁰ The Colorado River Indian Tribe did not participate, but it has been independently confirmed that they operated a tribal court at that time so they are included.

The number of tribal courts in California has more than doubled since the 2002 survey—from 9 to 22¹¹. The number of tribes with access to a tribal court increases to 39 when the Intertribal Court of Northern California (ICNC), representing 7 tribes, the Intertribal Court of Southern California (ICSC), representing 12 tribes, and the Northern California Intertribal Court System (NCICS), are included. Additional tribes make use of these consortia on a more limited or contract basis (see Figure 1).

Tribal courts in California currently hear more than 30 types of cases (see Table 5).

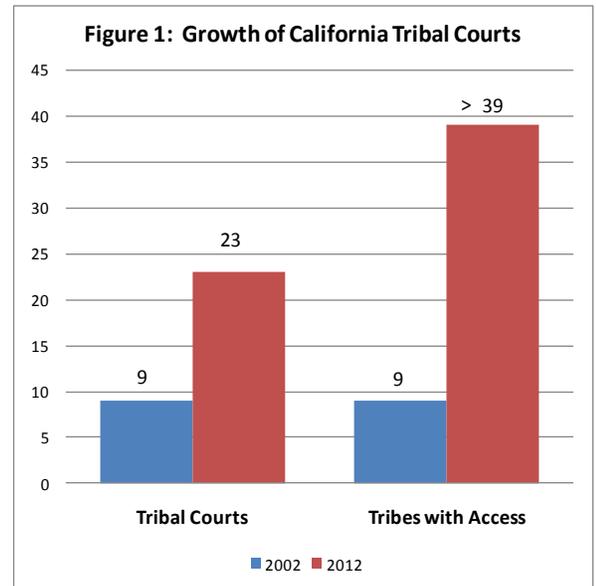


Table 5: Case types heard by California tribal courts¹²

<p><u>Civil/Probate</u> Civil complaints for monetary damages/Small claims Civil disputes Conservator issues Contract disputes Dog/Animal control Evictions/land disputes/possession of tribal lands Game fish and wildlife management Housing matters (unlawful detainer) Name & birth certificate changes Probate</p>	<p><u>Administrative</u> Building codes Elections Employment Enrollment Administrative procedures matters Appeals from tribal ordinances</p> <p><u>Criminal</u> Criminal offenses Environmental offenses Peace/security code violations Nuisance Torts Traffic Trespass</p>	<p><u>Family Law</u> Dissolution of marriage Domestic relations Domestic violence restraining orders Protection/Restraining orders</p> <p><u>Juvenile</u> Juvenile delinquency Juvenile wellness court Truancy Child abuse and neglect guardianships</p>
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¹¹ To locate a Tribal Court in California, use the AOC Tribal Court Directory (<http://www.courts.ca.gov/14400.htm>). For a map of these courts, go to <http://g.co/maps/cvdq8>

¹² The rules and procedures of each court will vary, and an individual court may not hear all of these types of cases.

The Tribal Law and Order Act of 2010 (TLOA)¹³

In recent years, the most significant development in tribal justice has been the creation of the Tribal Law and Order Act of 2010. A comprehensive description of this act and the programs and policies issuing from it is well beyond the scope of this discussion, but it would be incomplete without at least mentioning some of the major provisions contained in the TLOA.

- The TLOA requires greater accountability and coordination between federal and tribal justice authorities, for example, the filing of annual disposition reports by federal prosecutors. It also establishes the Office of Tribal Justice within the Department of Justice, providing a point of contact with tribal agencies to advise and provide technical assistance.
- It allows tribal authorities to impose increased penalties under certain circumstances (up to 3 years imprisonment and fines of \$15,000 per offense).
- Tribes in PL 280 states are now allowed to petition the Attorney General to re-assert federal jurisdiction in tribal areas. This is additional to state authority, not a replacement of it. A separate, but related provision makes it possible for tribal law enforcement and prosecutors to obtain commissions granting limited federal authority.
- The TLOA authorizes funding and grant opportunities across most areas of tribal justice, including support and training for data collection, data sharing, and reporting.

Because it is fairly recent legislation (signed into law on July 29, 2010) the immediate impact of the TLOA is only now being felt, and any long-term benefits will take some time to be realized.

¹³ The full text of the TLOA is available at:

<http://www.justice.gov/usao/az/IndianCountry/Tribal%20Law%20%20Order%20Act%202010.pdf>

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The views in this research update are those of the author and do not necessarily represent the official positions or policies of the Judicial Council of California.

The staff names listed above have been updated as of October 2013; otherwise the content of this research update remains unchanged.



JUDICIAL COUNCIL
OF CALIFORNIA

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

Following The Spirit of the Indian Child Welfare Act (ICWA)

A guide to understanding the benefits of providing culturally appropriate services to Native American families from non–federally recognized tribes within the juvenile dependency and delinquency systems¹

In an effort to ensure proper inquiry and noticing and to reduce the number of ICWA-related appeals in child welfare cases, this handout is intended to help social workers and others respond when they encounter children and families that report American Indian or Alaska Native ancestry yet find they are not from a federally recognized tribe. What is good social work practice in these cases, and how can courts support culturally centered practice that results in positive outcomes?

How to Provide “Spirit of the Law” ICWA Services

- Find out which tribes and Native American resources are in your area.
- Visit and establish connections with local tribes and Native American resources regardless of federal recognition status.
- Request ICWA training from tribal resources, California Department of Social Services training academies, or with staff from the Judicial Council of California.
- Conduct a proper inquiry of possible Native American ancestry in every case at the front end and throughout the duration of the case if family members provide additional lineage information.
- Connect a child and family with their tribe and local Native American resources regardless of tribal affiliation.
- Assist the child or family with the tribal enrollment process but understand it is up to the tribe to determine who is or is not eligible for enrollment.
- Conduct placements consistent with ICWA placement preferences even though not technically required. In the case of non–federally recognized tribes, tribal members would likely meet requirements as nonrelated extended family members because tribal communities tend to be related or close-knit communities.
- Consider the child’s tribal members as viable options for holiday visits, tutors, mentors, Court Appointed Special Advocates, etc.

¹ This document was developed with the Fresno County Department of Social Services, Child Welfare Services, and Placer County System of Care as part of the American Indian Enhancement of the Casey Family Programs/Child and Family Policy Institute of the California Breakthrough Series on addressing disproportionality 2009–2010 in collaboration with the American Indian Caucus of the California ICWA Workgroup, Child and Family Policy Institute of California, Stuart Foundation, and Tribal STAR.



JUDICIAL COUNCIL OF CALIFORNIA

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CENTER FOR FAMILIES, CHILDREN & THE COURTS

The Benefits of Providing “Spirit of the Law” ICWA Services

- If the child’s tribe is seeking federal recognition and is granted such recognition, formal ICWA case services, such as active efforts to prevent the breakup of the Indian family, will be required. If ICWA active efforts are attempted before the federal recognition, it is less disruptive for the child than having to change services and placement to make them in accordance with ICWA.
- Welfare and Institutions Code section 306.6 leaves the determination of services to individuals of non-recognized tribes to the discretion of the court that has jurisdiction.
- Even if individuals are not associated with a federally recognized tribe, they can still be part of an Indian community, which can serve as a strength and provide resources that enhance resilience factors for youth.
- Native American agencies that serve youth regardless of their tribe’s status can have youth groups that provide mental health and substance abuse services as well as fun trips, at no cost to the county.
- Many resources available to Native Americans do not require status in a federally recognized tribe (such as tribal Temporary Assistance for Needy Families (TANF), Native American health centers, and title VII Indian education programs).
- Some Native American health centers can access funding for residential treatment in and out of the state for children who are from non–federally recognized tribes.
- When culturally centered practice is provided as early as possible, it can result in positive outcomes for tribal youth.
- Linking a child to cultural resources that support his or her development into a healthy self-reliant adult can reduce the number of times the person may enter public systems.
- Culturally centered practice provided at the front end and throughout the lifespan of the case, regardless of the recognition status of the tribe, can reduce the public burden of cost over time.

Historical Background

- In 1848, gold was discovered in Coloma, California.
- In 1851 and 1852, representatives of the United States entered into 18 treaties with tribes throughout California that would have provided for more than 7.5 million acres of reserve land for the tribes’ use. These treaties were rejected by the U.S. Senate in secret session. The affected tribes were given no notice of the rejection for more than 50 years, and the promised reserve lands were never provided.
- In 1928, a census was conducted to determine the number of American Indians in California, resulting in the establishment of the 1933 California Indian Rolls (also referred to as the California Judgment Rolls). The purpose of the census and the rolls was



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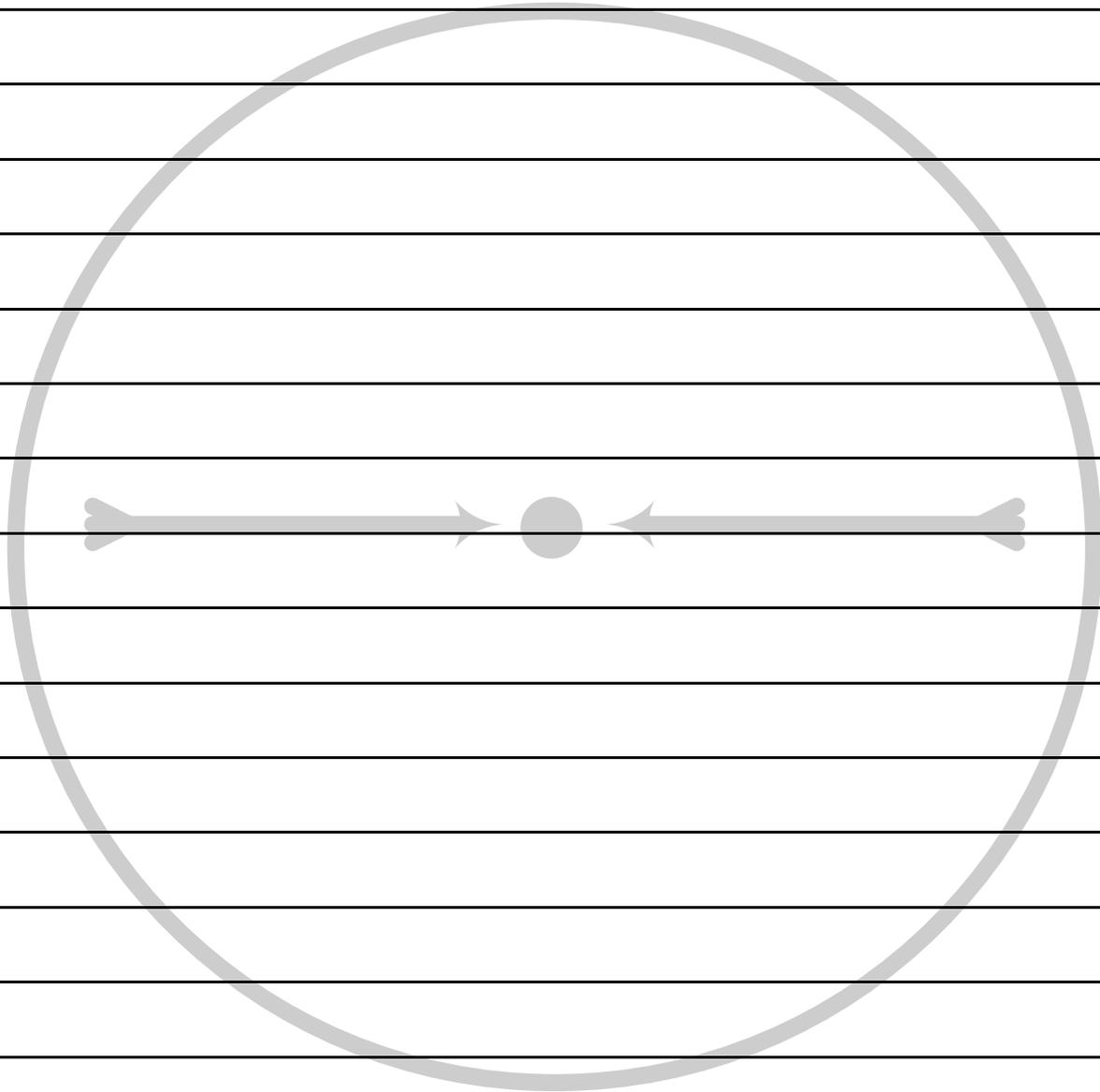
to determine the number of Indians in California who had families alive in 1851–1852, when treaties were signed by the original Californians.

- From 1953 to 1964, called the “Termination Era,” the U.S. Congress terminated the federal recognition status of more than 40 California tribes. These tribes were deemed as not federally or state recognized, though previously descendants of these tribes were federally recognized.
- Many tribes that were terminated are currently seeking federal recognition by the U.S. government.
- Tribal communities throughout California are active and thriving, whether or not they have federal recognition.
- Descendants of family members listed on the California Judgment Rolls can use this documentation of Native American ancestry to provide information as to tribal affiliation. *Note:* Finding an ancestor on the roll does not mean an individual is an enrolled member in that particular tribe. Only one tribe can be listed on this document, and it is possible to descend from more than one tribe.
- Senate Bill 678, passed in 2006 by the California Legislature, allows participation of non–federally recognized tribes, on request and at the discretion of the judge in the dependency matter. This expands the option and availability of culturally appropriate services to children from non-recognized tribes.

Additional Tips for Practice

- Some tribes include descendants as members, not only those who are enrolled.
- Best practices will vary depending on the location, available resources, and tribe.
- If you are having challenges in working with the family, local Native American agencies or tribes can assist.
- If the family requests additional resource information to trace its lineage, you can provide the following resource information:
 - The tribe;
 - Mission church records;
 - Mormon genealogical records;
 - Historical societies and museums;
 - Genealogical Web sites; and
 - Historical statistical information and documents in the county of the family’s origin.

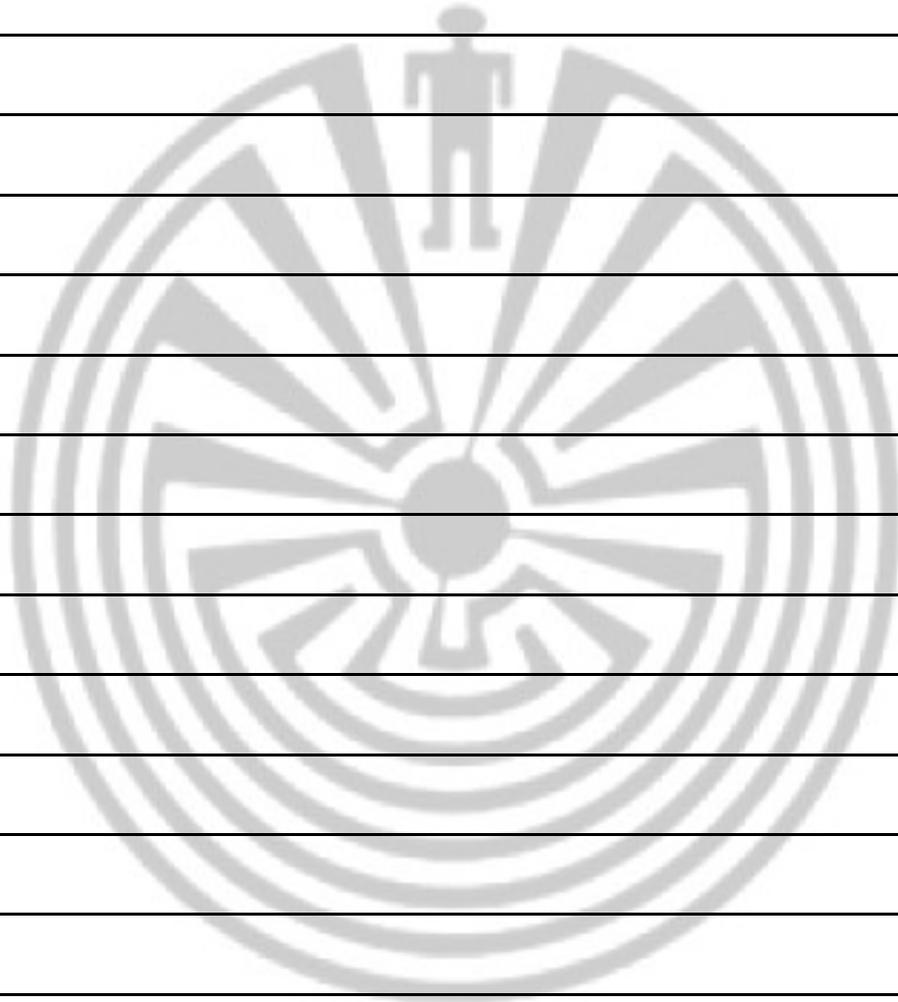
NOTES AND CONTACTS



Meaning of the Protection Symbol

Native American Indians were a deeply spiritual people and they communicated their history, thoughts, ideas and dreams from generation to generation through symbols. Native American symbols are generally geometric portrayals of celestial bodies, natural phenomena and animal designs. The Protection symbol is depicted as two arrows within a circle. The weapons were symbols of the major form of defense for the American Native Indian and the circle was another powerful symbol. A circle around another Native American symbol signifies family ties, closeness & protection. The circle has no break and cannot be broken. The black center circle depicts the air symbol which represents life.

NOTES AND CONTACTS



Hopi Tapuat – the mother child symbol. The lines represent stages of life, umbilical cord, and the path of moving – always within the watchfulness of the Mother. The center symbolizes the amniotic sack – the center of life – the beginning. This piece is also referred to as the Journey symbol

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*In loving memory of Rosetta Carol White Mountain whose legacy and
dedication to ICWA, families and the tribal communities throughout
the nation in her work at the City & County of San Francisco will
forever live on in hope, love and light.*





**Faces
of
ICWA**

