

# JUDICIAL COUNCIL OF CALIFORNIA

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

## **ICWA Inquiry in California – Legal Update for 2021 Webinar – Friday, December 4, 2020, 12:00-2:00p.m. Course Materials**

*Faculty:* Christopher S. Costa, Deputy County Counsel, Sacramento County; Hon. Shawna Schwarz, Judge, Superior Court of California, County of Santa Clara; Hon. Sunshine Sykes, Judge, Superior Court of California, County of Riverside; Judge Michael E. Whitaker, Judge, Superior Court of California, County of Los Angeles

**A brief history of Federal/California Indian Policies leading up to the passage of the ICWA**  
(additional resources and links)

[Early California Laws and Policies Related to California Indians](#) California Research Bureau, 2002


[TRIGGER POINTS: Current State of Research on History, Impacts, and Healing Related to the United States' Indian Industrial/Boarding School Policy](#)

### **An Historical and Cultural Perspective on ICWA**

This is a presentation on the background and purpose of ICWA by Justice William Thorne, Associate Presiding Judge of the Utah Court of Appeals and former tribal court judge in Utah, Idaho, Montana, New Mexico, Colorado, Arizona, Wisconsin, South Dakota, Nebraska, and Michigan.

- [Click here to view the video](#) 

### [Continuing the Dialogue](#)

This broadcast features discussions by state and tribal court judges on the history of Native Americans in California, U.S. government impact on Native American families, federal and state laws, the Indian Child Welfare Act, and application of the ICWA. [Transcript](#) .

### [California Social Work Education Center \(CalSWEC\) Title IV-E ICWA Modules](#)


The California Social Work Education Center (CalSWEC) Title IV-E ICWA Modules have been developed to provide a foundation for all BASW and MSW students in the Title IV-E Program about California Indian History, Tribal Sovereignty and the Indian Child Welfare Act (ICWA).

**Nuts and Bolts of ICWA Inquiry and Notice** (additional resources and links)

[Judicial Council of California Tribal/State Program Unit ICWA Job Aids](#)

California Department of Social Services Office of Tribal Affairs [ICWA Desk Reference](#)

ICWA –  
Initial Inquiry,  
Further Inquiry, and  
Formal Notice in  
California Juvenile  
Dependency  
Proceedings



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Faculty

- Christopher S. Costa, Deputy County Counsel, Sacramento County;
- Hon. Shawna Schwarz, Supervising Judge, Juvenile Dependency Division, Superior Court of California, County of Santa Clara;
- Hon. Sunshine Sykes, Judge of the Superior Court of California, County of Riverside;
- Hon. Michael E. Whitaker, Judge of the Superior Court of California, County of Los Angeles

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Housekeeping matters

- Participants audio and video will be muted throughout the presentation;
- Please type any questions into the Q & A box. Q & A box will be monitored throughout and answered during the presentation, time allowing.

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**Presentation outline and objectives**

<p><b>Content</b></p> <ul style="list-style-type: none"> <li>• A brief history of Federal/California Indian Policies leading up to the passage of ICWA;</li> <li>• ICWA Inquiry &amp; Notice – nuts and bolts and case hypotheticals;</li> <li>• Recent ICWA Appellate cases</li> </ul>	<p><b>Objective</b></p> <ul style="list-style-type: none"> <li>• Understand the purpose of ICWA, its value to Indian children &amp; families and the complexities of applying ICWA in California;</li> <li>• Understand and apply the legal requirements with a particular emphasis on recent changes;</li> <li>• Understand how courts are interpreting “reason to believe” vs. “reason to know”, &amp; how AB 2944 affects those interpretations.</li> </ul>
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**A Brief History of Federal/California Indian Policies Leading Up to the Passage of the ICWA**

- Special thanks to Judge Deborah Sanchez, Tom Lidot, and Brett Shelton for their input and materials.

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**What Happened in California?**

California became a state in 1850

- ❖ Laws were passed, significantly impacting the lives of the indigenous people of California
- ❖ Act for the Government and Protection of Indians in 1850
- ❖ California Militia Policies from 1851 -1859

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### What Happened in California?

The Act for the Government and Protection of Indians in 1850 facilitated removing California Indians from their traditional lands and separated children from their language and culture.

- ❖ Provided for indenturing children and adults
- ❖ Punished "vagrants" by hiring them out to the highest bidder at public auction

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### Indian Children Living in White Homes in California 1863 - 1879

Table 2. Native Children Living in Non-Native Households

Year	Children under 5	Children under 17
1863	n.d.	4,522
1864	n.d.	5,987
1865	n.d.	5,920
1866	427	1,629
1867	578	1,809
1868	324	1,558
1869	295	1,558
1870	382	1,551
1871	254	1,561
1872	247	1,526
1873	322	1,392
1874	206	1,348
1875	262	1,376
1876	290	1,405
1877	241	1,291
1878	372	1,552
1879	379	1,463

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### Indentures, Kidnapping and Selling

#### Kidnapping

- ❖ Newspapers reported that "disreputable persons" steal Indian children and sell them to whites
- ❖ In order to steal the children, they were "obliged in many cases to kill the parents"
- ❖ "for as low as they are on the scale of humanity . . ." the parents love prompts them to defend them "at the sacrifice of their lives"

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### California Expeditions Against the Indians 1850-1859

Article VII of the first state Constitution gave the Governor the power to call for the militia to "suppress insurrections"



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### California Expeditions Against the Indians 1850-1859

In 1850 the Governor called on the militia:

- ❖ He called for 100 sheriffs in San Diego and Los Angeles to "punish the Indians, bring them to terms, and protect the emigrants . . ."
- ❖ In El Dorado County he called for 200 men to "punish the Indians" for attacks along the emigrant trail

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### The Dawes Act of 1887

**INDIAN LAND FOR SALE**

GET A HOME OF YOUR OWN  
EASY PAYMENTS

PERFECT TITLE  
POSSESSION WITHIN THIRTY DAYS

**FINE LANDS IN THE WEST**  
IRRIGATED GRAZING AGRICULTURAL  
IRRIGABLE COUNTRY FARMING

is sold by the Department of the Interior under the Act of March 3, 1875, and the Act of March 3, 1879.

California	1,211,231	87.27	Oklahoma	24,654,000	811.14
Idaho	17,213,000	15.81	South Dakota	1,000,000	11.83
Arizona	2,681,000	12.48	North Dakota	1,000,000	11.83
Montana	11,250,000	9.85	Washington	4,875,000	42.37
Nebraska	2,441,000	9.62	Minnesota	1,000,000	11.83
North Dakota	22,215,371	7.83	Wyoming	885,000	20.84

THE TEN YEAR PERIOD OF EXTINCTION OF THE 500,000 ACRES WILL BE EXTENDED FOR ONE YEAR.

WALTER L. FISHER, ROBERT G. VALENTINE

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**The Dawes Act**

Adopted by Congress in 1887  
The Act authorized the President to divide Indian lands for allotments to individual Indians  
The stated objective was to assimilate Indians into mainstream society  
Under the Act the head of household would receive 160 acres  
Fee Simple

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**The Dawes Act**

Land was sold by individual Indians after 25 years  
The previous communally owned land eventually had a checkerboard effect with non-Indians living next to Indians  
90 million acres were declared surplus lands and made available to settlers  
Problems with passing land to heirs  
No tools, no seed, no experience

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**The Dawes Act**

Changes brought about to Indian culture:  
Hunting now unavailable  
Role shifts – women once caretakers of the fields were now domesticated  
Men now were in the fields  
Community focus was now nuclear focus  
Women had to be married to receive land under the Act

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### The Dawes Act

Indian societies that gave women status and power were turned upside down  
 The Act imposed nuclear patriarchal households onto many matrilineal societies  
 The “Five Civilized Tribes” were initially exempt, but became subject to the Act pursuant to amendments in 1898 and 1906  
 Federal government accounting problems – “fractionation”

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### Indian Boarding Schools



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### The Meriam Report of 1928



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### The Meriam Report of 1928

Commissioned by the government and funded by the Rockefeller Foundation, the report was officially titled *The Problem of Indian Administration*

Lewis Meriam was appointed as the director and tasked with reporting on the conditions of American Indians in the U.S. Meriam's report, over 800 pages, was submitted to the Secretary of Interior

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### The Meriam Report of 1928

The report was critical of the boarding schools citing overcrowding; disease; unqualified and untrained employees; children performing physical labor; substandard diet; and the young age of the children sent to schools. "At the worst schools the situation is serious in the extreme."



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### The Meriam Report of 1928

The report states that very young children were removed from home and recommended against this practice, he also recommended an elimination of preadolescent children at the schools.



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**The Meriam Report of 1928**

The report found fraud, exploitation and ongoing failures of the Bureau of Indian Affairs

The report criticized the Allotment Act and cited loss of land as a factor in reservation poverty

The land that remained was not suitable for farming or agriculture

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**The Meriam Report of 1928**

The Meriam report led to the Indian Reorganization Act (IRA) of 1934

The allotment system continued until the IRA when the policy was finally abandoned

The IRA allowed for some additional Indian autonomy and although, Indians were then able to write their own constitutions, they still had to be approved by the government

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**Indian Adoption Era 1950's - 70's**

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**1950's Termination and Relocation**

- 1950's Termination and Relocation
- 1953-1964: 109 Tribes terminated from federal responsibility and jurisdiction –forced assimilation. Voluntary urban relocation program pledged assistance with housing and employment. Numerous Indian families relocated to urban cities such as Chicago, Seattle, Los Angeles, and Denver.

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**Why did Congress pass ICWA?**

- April 8, 1974 Congress began a series of hearings regarding Indian child welfare.
- Sworn testimony revealed that federal and state governments had a well-know policy of removing Indian children from their families and Tribes.
- Since late 1800's an overwhelming percent of Indian children were removed from their homes and communities and placed in boarding schools.
- Many Indian children were removed for unsubstantiated claims of neglect because non-Indian social workers did not understand cultural differences in child rearing.

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### Why did Congress pass ICWA?

- In Montana, the ratio of Indian foster care placement was 13 times greater than non-Indian children.
- In South Dakota, 40 percent of all adoptions made by the State were of Indian children, yet Indians made up only 7 percent of the juvenile population.
- In Washington, the Indian adoption rate during this time was 19 times greater and the foster care rates was 10 times greater.
- In Michigan, an Indian child was 390% more often removed from their home than a non-Indian child.

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### Why did Congress pass ICWA?

- Officials testified under oath that government documents proved that, "the main thrust of federal policy, since the close of the Indian wars, had been to break up the extended family, the clan structure, to do tribal life and assimilate Indian populations. The practice of Indian religions was banned, children were punished for speaking their languages, and even making beadwork was prohibited by federal officials.

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### Why did Congress pass ICWA?

- Testimony of Dr. ROBERT BERGMAN, INDIAN HEALTH SERVICE talked about the policy: "Separating Indian children from their parents and tribes has been one of the major aims of governmental Indian services for generations. The assumption is that children and particularly those in any kind of difficulty would be better off being raised by someone other than their own parents. The purpose of the first boarding school on the Navajo reservation as stated in its charter in the 1890's was "to remove the Navajo child from the influence of his savage parents." "

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- Decisions made about Indian children were biased when made by non-Indian authorities.
- 25% to 35% of all Indian children were removed and raised at some time in non-Indian homes and institutions.

(Report on Federal, State, and Tribal Jurisdiction, 1976, p. 79)



Indian Boys In Truck  
Circa, 1941

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### Indian Child Welfare Act (ICWA)

- Congress took responsibility for the state of Indian families and passed the Indian child welfare act to help fix what official governmental policy helped to break.
- ICWA was written with the understanding that Indian tribes are in the best position to decide what is in the best interest of Indian children.
- ICWA attempts to fix what official government policy broke by promoting the following goals: a. Protect the best interests of Indian children and families as determined by their tribe. b. Promote the stability and security of Indian families; and c. Recognize and strengthen the role of tribal governments in determining child custody issues.

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### A Curious Paradox

Many early non-Indian commentators praised familial and Tribal devotion to their children.

Now, after generations of contact and conflict with western "civilization," many Indian families are perceived as incapable of child rearing.

(Report on Federal, State, and Tribal Jurisdiction, 1976, p. 79)



Cheyenne Mother & Child

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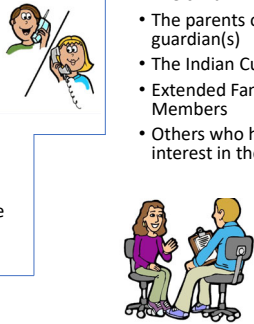
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### Duty of Initial Inquiry

- **Starts:** By asking the Reporting Party whether he/she has any info that the child may be an Indian child (WIC 224.2(a))
- **Continues:** Child Welfare Agencies have a duty to ask the following individuals whether the child is or may be Indian and where the parents are domiciled (WIC 224.2(a)/(b)):

- The child
- The parents or guardian(s)
- The Indian Custodian
- Extended Family Members
- Others who have an interest in the child




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### Documenting ICWA *Initial Inquiry* and *Further Inquiry*

- The Court should review the following evidence and documents regarding initial ICWA inquiry for every case:
  - Evidence establishing that the inquiry requirements of WIC 224.2(a) & (b) have been satisfied;
  - Completed **ICWA-10(A)** Indian Child Inquiry Attachment detailing all individuals who were asked about the child's potential Indian status – at a minimum should include the child, the child's parents, available extended family and others with an interest in the child. Court should review to ensure all required individuals were questioned; and
  - Completed **ICWA-020** Parental Notification of Indian Status forms – at a minimum for parents, legal guardian, Indian Custodian.
- If that initial inquiry gave the agency “reason to believe” within meaning of WIC 224.2(e)(1) – evidence by way of **report, declaration or testimony** that further inquiry and due diligence as required by WIC 224.2(e)(2)(A)-(C) has been completed.

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### Further Inquiry/Investigation (It's easy as 1,2,3...)



- If the court or social worker has *reason to believe* that an Indian child is involved in a proceeding, the court or social worker shall make “**further inquiry**” regarding the possible Indian status of the child, and shall make inquiry as soon as practicable (WIC 224.2(e))
- \*Note: AB 2944 (2020) amended WIC section 224.2(e). Per the amendment, there is “reason to believe” a child involved in a proceeding is an Indian child whenever the court, social worker, or probation officer has **information suggesting** that either the parent of the child or the child is a member or may be eligible for membership in an Indian tribe. Information suggesting membership or eligibility for membership includes, but is not limited to, **information that indicates, but does not establish**, the existence of one or more of the grounds for reason to know enumerated in paragraphs (1) to (6), inclusive, of subdivision (d).

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**Further Inquiry/Investigation includes:**

- 1. Interviewing parents and extended family members to gather the following information:**
  - Name, birth date, and birthplace of the child
  - The name of the Indian tribe which the child is a member or may be eligible for membership
  - All names known of the Indian child's bio parents, grandparents, and great grandparents, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, **tribal enrollment info or other direct lineal ancestors of the child**
- 2. Contacting the BIA and CDSS for assistance in identifying the names and contact info of the tribes in which the child may be a member or eligible for membership**
- 3. Multiple attempts to contact the designated agent for receipt of notices for the tribe or tribes, and contact with any other person that may reasonably be expected to have info regarding the child's membership or eligibility status by:**
  - Telephone, and/or
  - Fax, and/or
  - E-mail



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**Documenting Further Inquiry/Due Diligence (Reason to Believe)**

Step of Further Inquiry	How to Document for Court
(1) Interviewing family and gathering family info	-Indian Ancestry Family Tree -Court Report Template for ICWA
(2) Contacting CDSS and BIA for assistance in identifying tribal contact info	-Court Report Template for ICWA
(3) Contacting tribe(s) and sharing "information identified by tribe as necessary" for tribe(s) to make an membership or eligibility determination for child	-Court Report Template for ICWA

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**Bench Officer Hypo 1 – Sources of Evidence**

- The night before the detention hearing, the bench officer is reviewing the child welfare agency's filings. *What documents or sources of information should the Court be reviewing to gather information about whether there is a reason to believe or reason to know the child is an Indian child?*



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### Affirmative, Continuing Duty of Inquiry by Court

- At the first appearance in court, the court shall ask each participant whether the participant knows or has **“reason to know”** that the child is an Indian child (WIC 224.2(c))
- The court has an affirmative and continuing duty to inquire at each “proceeding” whether there is **“reason to know”** the child is an Indian child (WIC 224.2(a) and ICWA BIA Guidelines, Section B.1, p.11)



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### The Court’s Determination Regarding the Status of the Child – Only After “Further Inquiry” and “Due Diligence”

- IF the court makes a finding that proper and adequate further inquiry and due diligence have been conducted, the court may make a finding that the ICWA does not apply “to the proceedings” (WIC 224.2(i)(2))
- See also ICWA BIA Guidelines at pages 11 (Section B.1) and 22 (Section B.7)

*Inquiry each proceeding.* The rule does not require an inquiry at each hearing within a proceeding; but, if a new child-custody proceeding (such as a proceeding to terminate parental rights or for adoption) is initiated for the same child, the court must make a finding as to whether there is “reason to know” that the child is an Indian child. In situations in which the child was not identified as an Indian child in the prior proceeding, the court has a continuing duty to inquire whether the child is an Indian child.<sup>40</sup>

**Court’s Determination**

While a Tribe is the authoritative and best source regarding Tribal citizenship information, the court must ultimately determine whether the child is an Indian child for purposes of the child-custody proceeding. Ideally, that determination would be based on information provided by the Tribe, but may need to be based on other information if, for example, the Tribe’s fails to respond to verification requests.

The Department encourages prompt responses by Tribes, but if a Tribe fails to respond to **written requests for verification** regarding whether a child is in fact a citizen (or a biological parent is a citizen and the child is eligible for citizenship), and the agency has sought the assistance of the Bureau of Indian Affairs (BIA) in contacting the Tribe, **assessing any other information regarding whether the child is an Indian child for purposes of the child-custody proceeding based on the information it has available.** A finding that a child is an “Indian child” applies only for the purposes of the application of ICWA to that proceeding, and does not establish that child’s membership in a Tribe or eligibility for any federal programs or benefits for any other purpose. If new evidence later arises, the court will need to consider it and should alter the original determination if appropriate.

It is recommended the agency document the requests to the Tribe to obtain information or verification of a child’s or parent’s Tribal citizenship and provide this information for the court file.

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### AB 3176 – ICWA (“Reason to Know”)

WIC §224.2 defines when the court has “reason to know” a child is an Indian child:

- A person having an interest in the child (including an officer of the court, child, tribe, Indian organization, or a member of the child’s extended family) **informs the court that the child is an Indian child;**
- The residence of the child, the child’s parent, or Indian custodian is on a reservation or an Alaska Native village;
- Any participant of the proceeding informs the court that it has **discovered information indicating that the child is an Indian child;**
- The child gives the court reason to know he/she **is** an Indian child;
- The court is informed that the child is/has been a tribal court ward;
- The court is informed that either parent or the child possess an **identification card indicating membership/citizenship** in a tribe

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Appellate Cases

- *In re A.M.*, 47 Cal.App.5th 303 (2020) (4th DCA, Div. 2)
- *In re D.S.*, 46 Cal.App.5th 1041 (2020) (4th DCA, Div. 1)
- *In re Austin J.*, 47 Cal.App.5th 870 (2020) (2nd DCA, Div. 1)
- *In re M.W.*, 49 Cal.App.5th 1034 (2020) (3rd DCA)
- *In re Dominic F.*, 55 Cal.App.5th 558 (2020) (2nd DCA, Div. 8)

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In re Dominic F.

- Mother – ICWA 020 – “may have Indian Ancestry” and “unknown tribe from New Mexico”
- Trial Court – Orders Agency to begin an “investigation”
- Agency – Interviews Maternal Relatives and Mother
  - MGF – “his family believed they were of [N]ative American descent, but it was never proven” and “family was out of the New York [so] it could be from that area”
  - MGM – initially denied Indian Ancestry/Heritage but later stated that her paternal grandmother was “part [N]ative American” born in New Mexico
  - Mother states Maternal Great-Great Grandmother was “full native” but “nothing was checked before she passed away”
- Agency – Prepares / Serves ICWA Notices and Receives Responses from “New Mexico and New York” tribes

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In re Dominic F.

- Agency and Trial Court’s continuing duty – 3 Phases
  - Initial Duty to Inquire
  - Duty of Further Inquiry
  - Duty to provide formal ICWA notice

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**In re Dominic F. – Reason to Know**

- Based upon the information provided by Mother and the Maternal Relatives – Is this a Reason to Know case?
  - Agency argued that the information did not amount to knowing or having a reason to know that the Minor Children were Indian children therefore the formal notice provisions of Welfare and Institutions Code section 224.2, subdivision (f) and section 224.3 were not triggered.
  - The Court of Appeal agreed.
    - “A suggestion of Indian ancestry is not sufficient under ICWA or related California law to trigger the notice requirement”
    - “There was no obligation to give formal notice to the tribes and to file that notice with the court”

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**In re Dominic F. – Reason to Believe**

- Based upon the initial information provided by Mother – Is this a Reason to Believe case?
  - Based upon the information, the Court of Appeal held that the duty to inquire further was triggered by Mother’s claim “she may have Indian heritage from a tribe in New Mexico”
    - “We find this information is specific enough to trigger the duty of further inquiry. The initial inquiry conducted by the juvenile court here created a “*reason to believe*” the children possibly are Indian children.”
  - Court of Appeal acknowledged that the term “Reason to Believe” was not defined

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**In re Dominic F. – Reason to Believe**

- But would the information provided by Mother and the Maternal Relatives have amounted to a “Reason to Believe” prompting further inquiry under Section 224.2, subdivision (e) as amended by AB2944?

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**In re Dominic F.**

- Other issues for consideration – Did the Agency and Trial Court comply with the initial duty to inquire?
  - Should the interviews of the Maternal Grandfather and Maternal Grandmother, and the “further interview” of Mother have been considered as part of the “initial inquiry”?
  - Should the Agency have interviewed the Maternal Aunt and Maternal Cousin as part of the initial inquiry?

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**In re M.W.**

- Mother – ICWA 020 – Maternal Grandfather had Native American heritage with the Apache Tribe
- Father reported to the Agency that he had Indian ancestry but was neither a member of, nor seeking membership in, any tribe. Father also reported that his grandparents “may have membership”.
- Trial Court inquired of Father whether he had any Native American heritage to which Father stated “I don’t know” and when asked if knew of relatives who may have knowledge of Native American heritage, Father said “No”.
- Trial Court inquired of a Paternal Aunt present in the courtroom about Native American heritage to which she responded: “It’s believed that we do have; I don’t have confirmation” adding she did not know which tribe
- Trial Court ordered a “further inquiry”

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**In re M.W.**

- Paternal Grandfather – Reported to the Agency that a GGGM was part Navajo and a GGGGF was part Apache. PG further claimed that his family had not been involved with the reservation for generations but he thought that other relatives either currently lived on, or used to live on, reservations in Colorado and other states. Subsequently, PG refused to provide to the Agency contact information for other relatives.
- Father’s Counsel at a hearing raised potential Cherokee Indian heritage which prompted questions to Father about his Cherokee Indian heritage. Father deferred to statements made by his family members.
- Trial Court ordered a second further inquiry and notice if there is reason to know the minor child is an Indian child

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In re M.W.

Is there sufficient information to determine that there is a "Reason to Believe"?

Is there sufficient information to determine that there is a "Reason to Know" triggering notice?

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In re M.W.

- Reason to Believe – YES. Based upon the information gleaned from father and the paternal grandfather, the Court of Appeal determined "there was at best a reason to believe the minor may be an Indian child" thus triggering a "further inquiry."
- Reason to Know – NO. The Court of Appeal held that the trial court and Agency complied with the duty to conduct a further inquiry.
  - Based upon that inquiry, the Court of Appeal agreed with the trial court's finding that "there was no reason to know the minor was an Indian child and no further ICWA noticing was required."
  - "The information provided by father and the paternal grandfather indicated the possibility that they had Indian heritage but did not rise to the level of information indicating that the [minor] is an Indian child."

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In re M.W.

- Query:
  - As to the "Reason to Believe" issue, would the Court of Appeal have reached the same conclusion under Section 224.2, subdivision (e) as amended by AB 2944?

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**In re A.M.**

- Mother –
  - Initially Mother was “unsure if she was of American Indian descent” and “denied that she or the children [were] registered with a tribe”
  - At the detention hearing, Mother denied American Indian ancestry **BUT** she submitted an ICWA 020 that indicated otherwise checking the box indicating that she was or may be a member of an Indian Tribe and wrote the Tribe’s name as “unknown”. Mother also indicated that maternal relatives are or were members of federally recognized Indian Tribes
- Fathers – Both denied American Indian ancestry
- Agency prepares and serves ICWA 030 Notice to the BIA

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**In re A.M.**

- Subsequent to the Detention Hearing, Mother informs the Agency that “she was told that she has Blackfoot and Cherokee tribe affiliation but was not registered” and she “planned to register with” the Tribes
- Months later, Mother informs the Agency again that she “may have Blackfoot Tribe ancestry” but she was not registered
- Agency did not prepare and serve ICWA 030 Notices to the Blackfeet or Cherokee Tribes

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**In re A.M. – Reason to Know**

- Mother – on appeal, following the termination of her parental rights, Mother claimed that the Agency failed to comply with the inquiry and notice requirements of ICWA in light of her statements that “she believed she had Blackfoot and Cherokee heritage”
- The Court of Appeal disagreed
  - “There are two separate ICWA requirements which are sometimes conflated: the obligation to give notice to a tribe, and the obligation to conduct further inquiry to determine whether notice is necessary. Notice to a tribe is required, . . . , when the court knows or has reason to know the child is an Indian child.”
  - The information provided by Mother did not amount to knowing or having reason to know the minor children were Indian children as defined under state and federal law and were insufficient to trigger the ICWA notice provisions

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**In re A.M. – Reason to Believe**

- **However**, the Court of Appeal opined that the information provided by Mother was sufficient to trigger a further inquiry
  - “[the] information gave the juvenile court and DPSS reason to believe that an Indian child was involved and thus, the additional inquiry should have, at minimum, included interviews with Mother’s extended family members”
- The appellate court cautioned:
  - “ICWA does not obligate the court or DPSS ‘to cast about’ for investigative leads”
  - “There is no need for further inquiry if no one has offered information that would give the court or DPSS reason to believe that a child might be an Indian child. This includes circumstances where parents ‘fail to provide any information requiring follow up’, or if the persons who might have additional information are deceased”

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**In re A.M. – Reason to Believe**

- Query:
  - Would the Court of Appeal have reached the same conclusion under Section 224.2, subdivision (e) as amended by AB 2944?

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**In re Austin J.**

- Court of Appeal commented that the Legislature did not define the term “Reason to Believe” in the 2018 Amendments to Section 224.2
  - “Even if we assume that the possibility of Indian ancestry may suggest the possibility of Indian tribal membership, that bare suggestion is insufficient by itself to establish a reason to believe a child is an Indian child. In recent changes to California’s ICWA-related law, the Legislature removed the language, ‘information suggesting the child is a member of a tribe or eligible for membership in a tribe,’ from the list of circumstances that provided one with a ‘reason to know’ a child is an Indian child. **Significantly, it did not add that language to a definition of the newly created ‘reason to believe’ standard for further inquiry.** We will not infer its incorporation into that standard.” (47 Cal.App.5<sup>th</sup> at p. 889, emphasis added.)
- AB2944 – Legislature defined the term “Reason to Believe”

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### Bench Officer Hypo 2 – Family Has “Indian Blood”

- At the detention hearing, Parent Mother discloses that her maternal great grandmother told her that the family had “Indian blood”. Parent Mother then discloses that the maternal great grandmother is deceased. *What should the bench officer do in this scenario?*



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### Bench Officer Hypo 3 – DNA Home Test Result

- Paternal Grandfather at the disposition hearing discloses that he recently took a DNA home test that determined that he is “native Indian”. *What should the bench officer do in this scenario? Does the percentage of native Indian ancestry make any difference to compliance with ICWA inquiry and notice requirements?*



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### If “Reason to Know” Exists



- If the court has reason to know the child is an Indian child, the following must occur:
  - **The court shall treat the child as an Indian child** unless and until the court reviews the agency’s due diligence efforts (including further inquiry) and reviews copies of notices/tribe’s responses and the court determines on the record that the child does not meet the definition of an Indian child (WIC §224.2 (i)(1))
    - This includes a showing of active efforts at the detention hearing per WIC section 319(f)
    - This includes ICWA **placement preferences** as described in WIC section 319(h)(1)(C)
    - This includes qualified expert witness testimony for removals at disposition hearings and termination of parental rights hearings, as per WIC section 361 and WIC section 366.26

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**Formal Notice Required if “Reason to Know”**

What types of hearings require formal notice?

“Indian Child Custody Proceedings”, which are



ALL Hearings that may culminate in an order for *any* of the following:

1. **Foster Care Placement** (most commonly “Disposition Hearings”)
2. **Termination of Parental Rights (TPR)** (WIC section 366.26 hearings)
3. Preadoptive Placement (e.g., a WIC section 366.3/387/388 hearing where child is post TPR and is now being placed in foster care)
4. Adoptive placement (any action resulting in a final decree of adoption)

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**The Court’s Determination Regarding the Status of the Child – Only After “Further Inquiry” and “Due Diligence”**

- If there is reason to know that the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, **the court shall confirm via report, declaration or testimony that the agency used DUE DILIGENCE** to identify and work with all of the tribes which there is reason to know the child may be a member or eligible for membership (WIC 224.2(g))

If there is a reason to know, the agency ultimately proves “due diligence” by reporting, declaring, or testifying about:

- The results/responses following “further inquiry/investigation” (WIC 224.2(e))

AND

- The results/responses following formal notice (WIC 224.3)

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**Bench Officer Hypo 4 – Review of the ICWA-030**

- At the disposition hearing, the Social Services Agency does not provide a copy of the ICWA-030 it purportedly prepared and served on all Cherokee tribes. *What should the bench officer do in this scenario? If the agency produces a copy of the ICWA-030 sent to all Cherokee tribes, what should the bench officer do with the ICWA-030? What should the bench be looking for?*



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### Bench Officer Hypo 5 – Multiple Tribes Noticed

- If the Social Services Agency produces an ICWA-030 prepared and served on all Cherokee tribes, but only the Cherokee Nation has responded in writing that the minor child is not an “Indian child” as defined under ICWA. *What should the bench officer do in this scenario?*



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### Some Additional Notes/Thoughts on Confirming Whether a Child is an Indian Child

A tribe’s determination as to the child’s status is still conclusive (WIC 224.2(h))

- Information that the child is not enrolled or is not eligible for enrollment in the tribe is not determinative of the child’s membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law/custom

- If the court or social worker subsequently receives any info required by WIC 224.3 that was not previously available or included in the notice originally issued, the agency shall provide the additional info to **any tribes entitled to notice and the BIA**

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### Notice for Hearings that are not “Indian Child Custody Proceedings”

- For any hearing that does not meet the definition of an Indian child custody proceeding set forth in Section 224.1, or is not an emergency proceeding, notice to the child’s parents, Indian custodian, and tribe shall be sent in accordance with Sections 292, 293, and 295. See WIC 224.3(g))

- Meaning that WIC section 364 (in home review hearings), 366.21(e)/(f), 366.22, 366.25 (pre-permanency status review hearings), 366.3 and 366.31 (post-permanency status review hearings) only require that the tribes receive notice as follows:

- Notice by first class mail
- Notice 15-30 days before the hearing
- Notice containing a statement regarding the nature of the hearing, any recommended change in custody or status of the child, and any recommendation to the court

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# California Indian History

## SHORT OVERVIEW

### OF

## CALIFORNIA INDIAN HISTORY

### REGIONAL LIFEWAYS

One manner in which we can seek to understand aboriginal California Indian cultures is to look at the tribes inhabiting similar climatic and ecological zones. What emerges from this approach is a remarkable similarity in material aspects of the many different tribes inhabiting those territories. Generally speaking technologies and materials used to manufacture tools, homes and storage containers show great similarity. Hunting, trapping and fishing technologies also are shared across tribal lines terrain, available water plants and animals affected the density of populations, settlement patterns as each tribe adjusted to its environment.

### NORTHWEST

This area would include the Tolowa, Shasta, Karok, Yurok Hupa Whilikut, Chilula, Chimarike and Wiyot tribes. The distinctive northern rainforest environment encouraged these tribes to establish their villages along the many rivers, lagoons and coastal bays that dotted their landscape. While this territory was crisscrossed with thousands of trails, the most efficient form of transportation was the dugout canoe used to travel up and down rivers and cross the wider and deeper ones such as the Klamath. These tribes used the great coast Redwood trees for the manufacture of their boats and houses. Redwoods were cleverly felled by burning at the base and then split with elkhorn wedges. Redwood and sometimes cedar planks were used to construct rectangular gabled homes. Baskets in a variety of designs were manufactured in with the twined technique only. Many of these arts survived into the twentieth century and traditional skills have enjoyed a great renaissance in the past twenty years.

The elaborate ritual life of these tribes featured a World Renewal ceremony held each Fall in the largest villages. Sponsored by the wealthiest men in the communities, the ceremony's purpose was to prevent future natural catastrophes such as earthquakes, floods or failure of acorn crop or a poor salmon run. Supplication to supernatural spirits. Because such disasters directly threaten the community, great attention to detail and the utmost solemnity accompanied such ceremonies. This and other traditional rituals continue to be practiced, despite the grinding poverty that plagues many of these groups.

These tribes were governed by the most wealthy and powerful lineage leaders. The great emphasis on wealth found in these cultures is reflected in the emphasis on private ownership of food resources such as oak groves and fishing areas.

### NORTHEAST

This region included the Modoc, Achumawi, and Atsugewi tribes. The western portion of this territory was rich in acorn and Salmon. Further to the East, the climate changes from mountainous to a high desert type of topography. Here food resources were grass seeds, tuber berries along with rabbit and deer.

These Indians found tule to be a useful source of both food (the rootbulb is consumed) and a convenient material when laced together to form floor mats and structure covering. Volcanic mountains in the Western portion of their territory supplied the valuable trade commodity obsidian. The Social-political organization of these peoples was independent but connected to their neighbors by marriage ties. Following contact, the Achumawi and Atsugewi suffered a tremendous population decline due to vigilante violence and respiratory diseases. The Modocs spectacular 1872 resistance to removal to the Oregon territory was the last heroic military defense of native sovereignty in 19th century California Indian History.

Some surviving Northeast tribesmen received public land allotments around the turn of the century. The XL Rancheria was established for some of these Indians in 1938. Tragically the surviving Modocs were exiled to either Oregon or Oklahoma.

### CENTRAL CALIFORNIA

This vast territory includes: Bear River, Mattale, Lassick, Nogatl, Wintun, Yana, Yahi, Maidu, Wintun, Sinkyone, Wailaki, Kato, Yuki, Pomo, Lake Miwok, Wappo, Coast Miwok, Interior Miwok, Wappo, Coast Miwok, Interior Miwok, Monache, Yokuts, Costanoan, Esselen, Salinan and Tubatulabal tribes.

Vast differences exist between the coastal peoples, nearby mountain range territories, from those living in the vast central valleys and on the slopes of the Sierra Nevada. Nevertheless, all of these tribes enjoyed an abundance of acorn and salmon that could be readily obtained in the waterways north of Monterey Bay. Deer, elk, antelope and rabbit were available elsewhere in vast quantities.

In this region basketry reached the height of greatest variety. Perhaps the Pomo basket makers created the most elaborate versions of this art. Both coiled and twine type baskets were produced throughout the region. Fortunately, basket making survived the years of suppression of native arts and culture to once again become one of the most important culturally defining element for Indians in this region.

Common in this area was the semi-subterranean roundhouse where elaborate Kuksu dances were held in the past and continue to this day. These rituals assure the renewal of the world's natural foods both plant and animal. Despite differences, between tribes, these rituals share similar purposes.

Like everywhere else, in California, villages were fiercely independent and governed internally. The abundant food supply allowed for the establishment of villages of up to 1000 individuals, including craft specialists who produced specific objects and goods for a living. In smaller communities, each family produced all that was necessary for survival.

### **SOUTHERN CALIFORNIA**

Southern California presents a varied and somewhat unique region of the state. Beginning in the north, tribes found in this area are the Chumash, Alliklik, Kitanemuk, Serrano, Gabrielino Luiseno Cahuilla, and the Kumeyaay. The landmass and climate varied considerably from the windswept offshore Channel Islands that were principally inhabited by Chumash speaking peoples. Communication with their mainland neighbors was by large and graceful planked canoes powered by double paddle ores. These vessels were called "Tomols" and manufactured by a secretive guild of craftsmen. They could carry hundreds of pounds of trade goods and up to a dozen passengers. Like their northern neighbors, the Tactic speaking peoples of San Nicholas and Santa Catalina Islands built planked canoes and actively traded rich marine resources with mainland villages and tribes. Shoreline communities enjoyed the rich animal and faunal life of ocean, bays and wetlands environments. Interior tribes like the Serrano, Luiseno, Cahuilla, and Kumeyaay shared an environment rich in Sonoran life zone featuring vast quantities of rabbit, deer and an abundance of acorn, seeds and native grasses. At the higher elevations Desert Bighorn sheep were hunted.

Villages varied in size from poor desert communities with villages of as little as 100 people to the teeming Chumash villages with over a thousand inhabitants. Conical homes of arrowweed, tule or croton were common, while whale bone structures could be found on the coast and nearby Channel Islands. Interior groups manufactured clay storage vessels sometimes decorated with paint. Baskets were everywhere manufactured with unique designs. Catalina Island possessed a soapstone or steatite quarry. This unique stone was soft and could easily be carved with cutting tools and shaped into vessels, pipes and cooking slabs.

Each tribe and community had a chieftain, sometimes females, whose duty it was to organize community events and settle conflicts among their followers. This leader was usually assisted by a crier or assistant, Shaman or Indian doctors were known everywhere and greatly respected. The ritual use of the hallucinogen jimsonweed (*Datura meteloides*) was primarily in male puberty rituals. Like other California Indian communities, society was divided into three classes, the elite, a middle class and finally a less successful lower class. These robust peoples were among the first to encounter the strangers who would change their world forever.

### **HISTORY**

The Spanish entrada into Alta California was the last great expansions of Spain's vastly over extended empire in North America. Massive Indian revolts among the Pueblo Indians of the Rio Grande in the late 17th century provided the Franciscan padres with an argument to establish missions relatively free from colonial settlers. Thus, California and its Spanish Colonization would be different from earlier efforts to simultaneously introduce missionaries and colonists in their world conquest schemes. Organized by the driven Franciscan administrator Junipero Serra and military authorities under Gaspar de Portola, they journeyed to San Diego in 1769 to establish the first of 21 coastal missions.

Despite romantic portraits of California missions, they were essentially coercive religious, labor camps organized primarily to benefit the colonizers. The overall plan was to first militarily intimidate the local Indians with armed Spanish soldiers who always accompanied the Franciscans in their missionary efforts. At the same time, the newcomers introduced domestic stock animals that gobbled up native foods and undermined the free or "gentile" tribe's efforts to remain economically independent. A well-established pattern of bribes, intimidation and the expected onslaught of European diseases insured experienced missionaries that eventually desperate parents of sick and dying children and many elders would prompt frightened Indian families to seek assistance from the newcomers who seemed to be immune to the horrible diseases that

overwhelmed Indians. The missions were authorized by the crown to “convert” the Indians in a ten-year period. Thereafter they were supposed to surrender their control over the mission’s livestock, fields, orchards and building to the Indians. But the padres never achieved this goal and the lands and wealth was stolen from the Indians.

Epidemic diseases proved to be the most significant factor in colonial efforts to overcome native resistance. Soon after the arrival of Spanish colonists, new diseases appeared among the tribes in close proximity Spanish missions. Scientific study of demographic trends during this period indicate the Indians of the America’s did not possess any natural immunities to introduced European diseases. Maladies such as smallpox, syphilis, diphtheria and even children’s ailments such as chickenpox and measles caused untold suffering and death among Indians near the Spanish centers of population. Even before the outbreak of epidemics, a general population decline was recorded that can be attributed to the unhygienic environment of colonial population centers. A series of murderous epidemic diseases swept over the terrified mission Indian populations. Beginning in 1777 a voracious epidemic likely associated with a water born bacterial infection devastated Santa Clara Valley Costanoan children. Again, children were the primary victims of a second epidemic of pneumonia and diphtheria expended from Monterey to Los Angeles was recorded in 1802. By far the worst of these terrifying epidemics began in 1806 and killed thousands of Indian children and adults. It has been identified as measles and attacked Indian populations from San Francisco to the central coast settlement of Santa Barbara. Sadly, the missionary practice of forcibly separating Indian children from their parents and incarcerating children from the age of six in filthy and disease-ridden gender barracks most likely increased the suffering and death of above mentioned epidemics. Excessive manual labor demands of the missionaries and poor nutrition probably contributed to the Indians inability to resist such infections. Less easily measured damage to mission Indian tribes occurred as they vainly struggled to understand the biological tragedy that was overwhelming them. Faith in their traditional shaman suffered when native efforts were ineffective in stemming the tide of misery, suffering and death that life in the missions resulted in. With monotonous regularity, missionaries and other colonial officials reported upon the massive death and poor health of their Indian laborers. Pioneering demographer Sherburne F. Cook conducted exhaustive studies and concluded that perhaps as much as 60% of the population decline of mission Indians was due to introduced diseases.

#### **NATIVE RESISTANCE**

The unrelenting labor demands, forced separation of children from their parents and un-ending physical coercion that characterized the life of Indians under padre’s authority resulted in several well documented forms of Indian resistance. Within the missions, the so-called “converts” continued to surreptitiously worship their old deities as well as conduct native dances and rituals in secret. By far the most frequent form of mission Indian resistance was fugativism. While thousands of the 81,586 baptized Indians temporarily fled their missions, more than one out of 24 successfully escaped the plantation like mission labor camps. Many Mission Indians viewed the padres as powerful witches who could only be neutralized by assassination. Consequently, several assassinations occurred. At Mission San Miguel in the year of 1801 three padres were poisoned, one of whom died as a result. Four years later another San Miguel Yokut male attempted to stone a padre to death. In 1804 a San Diego padre was poisoned by his personal cook. Costanoan Indians at Mission Santa Cruz, in 1812, killed a padre for introducing a new instrument of torture which he unwisely announced he planned to use on some luckless neophytes awaiting a beating. Few contemporaries Americans know of the widespread armed revolts precipitated by Mission Indians against colonial authorities. The Kumeyaay of San Diego launched two serious military assaults against the missionaries and their military escorts within five weeks of their arrival in 1769. Desperate to stop an ugly pattern of sexual assaults, the Kumeyaay utterly destroyed Mission San Diego and killed the local padre in 1775. Quechan and Mohave Indians along the Colorado River to the east destroyed two missions, killed four missionaries and numerous other colonists in a spectacular uprising in 1781. This last rebellion permanently denied the only overland route into Alta California from Northern New Spain (Mexico) to Spanish authorities. Military efforts to reopen the road and punish the Indians were met with utter failure. The last great mission Indian revolt occurred in 1824 when disenchanting Chumash Indians violently overthrew mission control at Santa Barbara, Santa Ynez and La Purisima. Santa Barbara was sacked and abandoned while Santa Ynez Chumash torched 3/4 of the buildings before fleeing. Defiant Chumash at La Purisima in fact seized that mission and fought a pitched battle with colonial troops while a significant number of other Chumash escaped deep into the interior of the Southern San Joaquin Valley. After 1810 a growing number of guerrilla bands evolved in the interior when fugitive mission Indians allied with interior tribes and villages. Mounted on horses and using modern weapons, they began raiding mission livestock and fighting colonial military forces.

The impact of the mission system on the many coastal tribes was devastating. Missionaries required tribes to abandon their aboriginal territories and live in filthy, disease ridden and crowded labor camps. Massive herds on introduced stock animals and new seed crops soon crowded out aboriginal game animals and native plants. Feral hogs ate tons of raw acorns, depriving even the non-missionized tribes in the interior of a significant amount of aboriginal protein. Murderous waves of epidemic diseases swept over the terrified Mission Indian tribes resulting in massive suffering and death for thousands of native men, women and children. The short life expectancy of mission Indians prompted missionaries to vigorously pursue runaways and coerce interior tribes into supplying more and more laborers for the padres. Missionary activities therefore thoroughly disrupted not only coastal tribes, but their demand for healthy laborers seriously impacted adjacent interior tribes. Finally, by

1836 the Mexican Republic forcibly stripped the padres of the power to coerce labor from the Indians and the mission rapidly collapsed. About 100,000 or nearly a third of the aboriginal population of California died as a direct consequence of the missions of California.

Despite the devastating population decline suffered by tribes in whose territories missions had been established, many managed to maintain tribal cohesion. After 1800, most mission populations were a hodgepodge of different tribes speaking a multiplicity of languages. Because many Indians refused to learn or feigned ignorance of the Spanish language, missionaries appointed labor overseers from each tribe to direct work crews. Such practical policies kept tribesmen from losing culturally distinct identity. Further evidence of cultural persistence was the practice of tribes maintaining separate housing in multi-tribal Indian villages built next to the missions. Finally, many former mission Indians continued to speak their native languages and provide researchers with detailed ethnographic and linguistic data well into the 20th century.

### **INDIANS AND THE MEXICAN REPUBLIC**

In 1823 the Spanish Flag was replaced by that of the Mexican Republic. Little immediate change in personal or Indian policy occurred. However, the independence government was decidedly anti-clerical and the growing body of colonial leaders deeply resented the monopoly of Indian lands and the unpaid Indian labor enjoyed by the Franciscans. While no land grants to the colonists had occurred under Spanish rule, some 25 grazing permits or concessions had been issued to colonial citizens. This was the beginning of the dispossession of tribal lands by colonial authorities. The vast plantation like missions claimed about 1/6 of the present territory of the state. But legal title to these lands were assigned to the Spanish crown. The missions were only supposed to last 10 years, after which the developed estates were to be distributed to surviving mission Indians. It was assumed that the Indians would evolve into hardworking, tax paying citizens of Mexico. But the missionaries kept coming up with excuses why they should not surrender the rich pastoral and agrarian empire they had erected with the lands, resources and hard labor of mission Indians. The Mexican Republic's 1824 constitution declared Indians to be citizens with rights to both vote and hold public office. Despite this liberal declaration, Indians throughout the republic continued to be treated as slaves.

### **COLLAPSE OF THE MISSION SYSTEM**

In actual practice, the new government gave 51 land grants to its colonial citizens between 1824 and 1834. These lands actually belonged to various tribes then incarcerated in nearby missions. These actions just increased the lust for more Indian lands by a growing body of colonial ranchers. There followed a growing chorus of demands that the missionaries surrender their monopoly on Indian labor and "free" the Indians. The sincerity those sentiments should be seriously doubted. The power of this class prevailed and between 1834-36 the government revoked the power of the Franciscans to extract labor from the Indians and inaugurated a plan to distribute mission lands. Venal public officials in charge of the distribution granted the most valuable lands to themselves and their relatives. The secularization processes, it was called, was so restrictive that few ex-mission Indians were eligible for the distributed lands. More significant still, the majority of surviving mission Indians were not native to the areas of coastal missions. Most neophytes at this time had been forced to relocate from their tribal domains and promptly returned to them following their liberation.

Many of these returned exiles were faced with difficult tasks of reconstructing their decimated communities in the wake of crippling population declines. Furthermore, their tribal lands had become transformed by the introduction of vast herds of horses, cattle, sheep, goats and hogs that destroyed the native flora, the primary source of native diet. Wild game animals were likewise driven off by these new animals. What developed from this new condition was the emergence of guerrilla Indian bands made-up of former fugitive mission Indians and interior tribesmen from villages devastated by official and unofficial Mexican paramilitary attacks and slave hunting raids. Eventually a significant number of these interior groups joined together to form new conglomerate tribes. These innovative and resilient tribes quickly converted the anti-mission activities of their members into systematic efforts to re-assert their sovereignty by widespread and highly organized campaigns against Mexican ranchers and government authority in general.

Vastly overestimating their power, Mexican authorities authorized an additional 762 land grants by 1847. In reality, the effectiveness of Indian stock raiders increased dramatically when American and Canadian fur trappers provided a lucrative market for purloined horses by the mid 1830's. Interior Mexican ranches were increasingly abandoned in the face of economic ruin by native stock raiding activities. Even Johann A. Sutter was reduced to begging the Mexican government to buy his fort following a mauling at the hands of Miwok Indians near the Calaveras in June of 1846.

Despite these successes, a series of murderous epidemics in the twilight years of the Mexican era severely reduced the interior population. For instance, in 1833 an American party of fur trappers introduced a murderous scourge of malaria into the Sacramento and San Joaquin River drainages. While traversing the epicenter of the plague, J. J. Warner reported,

***“From the head of the Sacramento to the great bend and slough of the San Joaquin we did not see more than six or eight live Indians; while large numbers of their skulls and dead bodies were seen under almost every shade tree near the water, where the uninhabited and deserted villages had been converted into graveyards.”***

In this tragedy, more than 20,000 Central Valley Miwok, Yokuts, Wintun, and Maidu Indians perished. A new outbreak of small pox devastated Coast Miwok, Pomo, Wappo, and Wintun tribes. Approximately 2000 died in this 1837 epidemic originating from Fort Ross. By 1840 these and other murderous maladies had so thoroughly saturated the Indian population of Mexican California that diseases became endemic.

Mexican forced labor and violence at the hands of the militia and paramilitary slave hunting parties account for a significant amount of the population decline suffered by California Indians. On the eve of the American take-over the aboriginal population of approximately 310,000 had been reduced to about 150,000. This gut wrenching 50% decline had occurred in just 77 years. The implications for survivors is largely a mute tale of suffering and grieving over the loss of a stunning number of children, parents and elders. What came next was worse still.

### **THE AMERICAN INVASION**

Alta California the poorly managed and badly neglected stepchild of Mexico was rapidly overwhelmed by a combination of aggressive Indian raids and the arrival of United States Army, Navy and Marine forces in the summer of 1846. Despite a seemingly irrational murderous attack on Sacramento River Maidu Indian villages by U.S. Army forces under the command of John C. Fremont, the majority of California Indians involved in that struggle aided the Americans as scouts, warrior-soldiers and wranglers.

When Mexican resistance collapsed in January of 1847, thereafter Indian Affairs was administered by a succession of military governors. Stock raiding Indians in the interior recommenced their depredations when they learned Indian slavers such as Mariano Guadalupe Vallejo and Johann A. Sutter had been appointed as Indian sub-agents. Military government's policy was to suppress stock raiding and furthermore imposed draconian restrictions on the free movement of Indians and required Indians to carry certificates of employment.

### **THE GOLD RUSH**

The discovery of gold in the foothills of the Sierra Nevada at a sawmill construction site developed by Indian Agent Johann Sutter, ushered in one of the darkest episodes of dispossession widespread sexual assault and mass murder against the native people of California. Sutter immediately negotiated a treaty with the chief of the Coloma Nisenan Tribe which would have given a three-year lease to lands surrounding the gold discovery site. During those negotiations, the chief prophetically warned Sutter that the yellow metal he so eagerly sought was, "very bad medicine. It belonged to a demon who devoured all who searched for it". Eventually the military governor refused to endorse Sutter's self-serving actions.

Within a year a hoard of 100,000 adventurers from all over the world descended upon the native peoples of California with catastrophic results. The entire state was scoured by gold seekers. Thinly spread government officials were overwhelmed by this unprecedented deluge of immigrants and all effective authority collapsed. Military authorities could not prevent widespread desertion of soldiers and chaos reigned.

A virtual reign of terror enveloped tribesmen the mining districts. Wanton killings and violence against Indians resisting miners developed into a deadly pattern. An Oustemah Nisenan female named Betsy later recalled,

***"A life of ease and peace was interrupted when I was a little girl by the arrival of the whitemen. Each day the population increased and the Indians feared the invaders and great consternation prevailed .... as gold excitement advanced, we were moved again and again, each time in haste. Indian children.... when taken into town would blacken their faces with dirt so the newcomers would not steal them...."***

Numerous vigilante type paramilitary troops were established whose principal occupation seems to have been to kill Indians and kidnap their children. Groups such as the Humboldt Home Guard, the Eel River Minutemen and the Placer Blades among others terrorized local Indians and caused the premier 19th century historian Hubert Howe Bancroft to describe them as follows.

***"The California valley cannot grace her annals with a single Indian war bordering on respectability. It can, however, boast a hundred or two of as brutal butchering, on the part of our honest miners and brave pioneers, as any area of equal extent in our republic....."***

The handiwork of these well-armed death squads combined with the widespread random killing of Indians by individual miners resulted in the death of 100,000 Indians in the first two years of the gold rush. A staggering loss of two thirds of the population. Nothing in American Indian history is even remotely comparable to this massive orgy of theft and mass murder. Stunned survivors now perhaps numbering fewer than 70,000 teetered near the brink of total annihilation.

The newcomers sometimes met organized Indian resistance. In 1850 a Cupeno chief named Antonio Garra Sr. organized local Southern California Indians to resist an illegal tax imposed upon San Diego Indians by the county sheriff. Sporadic attacks upon both Americans and some Mexicans by Garra's followers resulted in a massive crackdown on Indian communities. Soon a rival Cahuilla chief captured Garra and turned him over to the authorities who promptly hung him and several of his followers. In 1851 several mountain Miwok tribes offered armed resistance to the hoard of miners overrunning their territory. When one tribe destroyed a

trading-post owned by an American who kept at least 12 Indian “wives” a paramilitary militia was formed and aggressively attacked Indians throughout the southern mines area. Eventually this group calling itself the “Mariposa Battalion” breached the unknown granite fortress of the valley of Yosemite. A ruthless campaign against the Yosemite Indians resulted in the capture of their Chief Teneya and a temporary exile to the San Joaquin River “Indian Farm”.

In reality, these Indian campaigns were motivated by rapacious greed of the miners to gain Indian lands and provide political capital for ambitious office seekers. Sadly, both the state and federal government eventually reimbursed the vast majority of these paramilitary forays for expenses incurred. This is indeed a dreary story of subsidized murder on a scale unequalled in all of this country’s Indian wars.

### **TREATY MAKING AND TREATY REJECTION**

In 1849 Washington sent two special emissaries to California to report on the nature of Mexico’s recognition of Indian land titles in California. Neither spoke to a single Indian and eventually produced an ambiguous and inaccurate report to the great disadvantage of the Indians. Upon this misinformation, and in an attempt to stem the unprecedented chaos and mass murder of the gold miner’s confrontation with the California Indians, Congress authorized three federal officials to make treaties with the California Indians. Their purpose was to extinguish Indian land titles and provide the Indians with territories that would be protected from encroachment by non-Indians. They were given just \$25,000 to accomplish this monumental task. Soon after their arrival in San Francisco in January of 1851, the enormous size of territory prompted the commissioners to split up and negotiate treaties on their own. The reports and correspondence of the treaty commissioners clearly demonstrate that the suspicious and reluctant Indians who could be persuaded to attend the treaty meetings were only vaguely aware of its purpose. This can be attributed to the frequent problems of translators who often had to translate several Indian dialects into Spanish and again into English. Few if any of the Indians could understand English. The random manner in which the commissioners organized the meetings resulted in the majority of tribes not participating. Despite these crippling drawbacks, the treaty process proceeded until January 5th of 1852. In all, eighteen treaties were negotiated. The treaties agreed to set aside certain tracts of land for the signatory tribes. They additionally promised the assistance of farmers, school teachers, blacksmiths, stock animals, seeds and agricultural equipment, cloth and much more. In return, the signatory tribes promised to forever quitclaim to the United States their lands. Just what specific lands being surrendered were not specified. Anthropologists in the 20th century could only identify 67 tribes, 45 village names and 14 alternative spellings of tribal names. Eighteen groups were unidentifiable. Despite the obvious fact that not all California Indian tribes had been consulted or contacted they too would be bound by the negotiations. Nevertheless, the federal government promised to reserve 7,466,000 acres of land to the dispossessed Indians,

An immediate outcry from an enraged public followed the completion of the commissioner’s task. It was revealed that the commissioners had overspent their budget by a half a million dollars in the incredibly inflated economy of gold rush California. Local newspapers orchestrated an abusive campaign and local politicians echoed the fears of their compassionate electorate that the treaty reserves might contain something valuable, like gold. Most Americans simply wanted the Indians removed to some other territory or state. California’s newly elected state senators provided the final blow. On July 8, 1852, the Senate in executive session refused to ratify the treaties. They were filed with an injunction of secrecy that was finally removed in 1905!

Meanwhile, Congress had created a commission to validate land titles in California. The commission was required by law to both inform the Indians that it would be necessary to file claims for their lands and report upon the nature of these claims. Because no one bothered to inform the Indians of these requirements, no claims were submitted. Through this neat trick, the federal government “legally” avoided the normally lengthy and duplicitous negotiations over land sessions.

The practical result was the complete dispossession of the Indians in the eyes of the government. Despite this chicanery, several tribes would violently and later legally contest these frauds to defend their territory, homes and families.

From the native viewpoint, signatories of the treaties had agreed to move to specific locations promised in the treaties. Yet such attempts often met with violent attacks by miners and others opposed to the very existence of Indians. Non-treaty groups simply endured the madness and race hatred of those waging a merciless war against them. Most tribes did their best to withdraw from all contact with the mayhem overwhelming them.

### **A HARSH STATE GOVERNMENT**

The formation of the state government proved to be an official instrument of the oppressive mentality of the miner’s militia. In Governor McDougall first address to the legislature he promised, “a war of extermination will continue to be waged between the races until the Indian race becomes extinct.....” Despite guarantees in the Treaty of Guadalupe Hidalgo, Indians were denied state citizenship, voting rights and more important still, the right to testify in court. These acts effectively removed all legal redress for native peoples and left them to the mercy of anyone who chose to sexual assault, kidnap even murder them. Despite entering the union as a free state in 1850, the California legislature rapidly enacted a series of laws legalizing Indian slavery. One of the laws sanctioned an indenture system similar to Mexican peonage in widespread practice throughout California prior

to 1850. All levels of state, county and local governments participated in this ugly practice that evolved into a heartless policy of killing Indian parents and kidnapping and indenturing the victim's children. Indian youth could be enslaved by the cruel act to the age of 30 for males and 25 for females. This barbarous law was finally repealed four years after President Lincoln's emancipation proclamation in 1863.

The federal government finally decided to establish an Indian policy in California in 1854 when Edward F. Beale was appointed Superintendent of Indian Affairs for California. Beale quickly established a prototype Indian preserve within the boundaries of the Army's military reserve in the Southern San Joaquin Valley, called Fort Tejon. The site was chosen because of the continuing problem of local horse raiding by Southern California Indians. Yokut, Gabrielino and Kitanemuk tribesmen were gathered together on this barren 50,000-acre parcel called San Sebastian. Beale's instruction from Washington authorized him to establish four additional reserves with a \$250,000 budget. Apparently, Beale squandered his entire allocation on less than 200 Indians at San Sebastian. This action becomes comprehensible only when it is known that within a decade, Beale wound up owning much of that short-lived reserve. His behavior in office set the standard for decades of widespread corruption and incompetence that distinguishes the Bureau of Indian Affairs in California and elsewhere. Following Beale's removal from office in 1856, Col. T.J. Henely established Indian Reserves on the Klamath River, Nome Lackee near Colusa, Nome Cult (Round Valley) and the Mendocino Reserve at the mouth of the Noyo River on the coast. The latter two were both located in Mendocino County.

These hastily organized communities provided little in the way of support or even minimal refuge for native peoples cajoled to move there. These unsurveyed reserves lacked game, suitable agricultural lands and water. They soon became overrun with white squatters who systematically corrupted the Indians and introduced an epidemic of venereal diseases. More unsatisfactory still, were Indian Farms located on lands rented from newcomers now holding legal title to said lands. The Fresno and Kings River Indian Farms were established in the south-eastern San Joaquin Valley along the rivers of the same name. Federal records clearly show these farms provided only a handful of Indians homes, the majority completely lacked cultivation, but they did provide paychecks for the superintendent's friends and political cronies. The majority of these early reserves and Indian Farms were abandoned in the 1860's due to the state's Indian slavery codes that allowed all able-bodied males, females and even children to be indentured to white citizens. A great many reservation residents could not participate in the agricultural and ranching programs because their labor "belonged" to private state citizens. Frequently, federal and Indian agents themselves indentured his wards for personal enrichment. Government records for this period show that fewer than 3000 of the less than 70,000 surviving California Indians received recognition let alone provisions for reservations. South of the Tehachapi Mountains California Indians remained totally ignored by Washington. So what were the vast majority of Indians doing during this period?

#### **LATE 19TH CENTURY ADAPTATION AND RESISTANCE**

The vast majority of California Indians struggled to survive without government aid or recognition. Many on the verge of actual starvation dispersed throughout their territories and sought to support themselves through agriculture and ranch labor for the new "owners" of California. This was a traditional pattern of behavior when drought and other natural catastrophes struck. Deprived of land and their life sustaining resources, they were left with no other options. With a few notable exceptions, the mass murder of the Gold Rush era diminished, as Indian victims became scarce and survivors learned to avoid Americans whenever possible. The great hardships of this adaptation were made bearable with the development of a messianic cult movement called the Ghost Dance of 1870. In part triggered by the introduction of Christian missionary activities, this new religious movement was pan-tribal in nature and obviously a response to the massive population decline. The movement promised the return of dead relatives and the disappearance of the oppressors. It was most desperately embraced by those tribes who had most recently suffered great population declines. Despite lasting only a few years, it was fundamental in revitalizing intra-tribal religious integration. In short, it provided hope for the nearly hopeless situation Indian found themselves confronted with.

The last organized violent reaction to dispossession and federal Indian policy erupted between 1860-1872. The first was a series of Indian wars in Northwestern California. Here Yurok, Karok, Hupa and other tribes fought the increasingly paranoid and aggressive Americans who routinely murdered them, stole their children and burned their villages. Jack Norton, a Hupa historian characterized the situation as a "deranged frontier". Attempts to disarm Indians and continued kidnapping for sexual slavery quickly led to violent resistance. In 1858, the militia established a fort in the Hupa Valley to make war on the Wilkut and Chilula tribes. Many members of those tribes had been captured and deported to the Mendocino Reservation. Frustrated by the stiff resistance of interior groups, the militia found it easier to murder nearby inoffensive peaceful and non-hostile Indians. The notorious Indian Island massacre in Humboldt Bay was the bitter fruit of that race hatred. Eventually some Hupa Indians agreed to assist the soldiers in hunting their hostile neighbors. Despite this defection, several bands of Hupa joined the hostiles and effectively resisted until 1864 when they surrendered. This led to the establishment of the Hupa Valley Reservation in August of 1864.

Because both state and federal authorities seriously underestimated the number of surviving California Indians, plans to remove all Indians to the handful of reservations already established, proved impractical. Several attempts to place multiple tribes on single reservations frequently resulted in violence, mass murder

and war. The Modoc war of 1872 was caused by such a policy that insisted the Modocs be deported out of California to the Klamath Reservation in Oregon. Driven twice from that reserve, a third attempt to deport the Modocs back to Klamath resulted in a stunning war in 1872. The Indian service removed the Konkow Indians of Chico and the Atsugewi of Shasta County to the Round Valley Reservation in 1862. Squatters overrunning the Reservation descended upon these unfortunate tribesmen and murdered 45 of them. The mob justified its actions by claiming the Indians might steal food from the squatters. Survivors fled in terror back to Chico, only to be again removed to Round Valley sometime afterwards. The BIA showed little interest in assisting such tribes. Those lucky enough to have reservations established in the aboriginal territories were understandably reluctant to share the scant advantages they enjoyed with newly arrived emigre tribes. Also true was the fact that no tribes desired to be relocated outside of their aboriginal territories. After all, each tribe's creation story emphasized the sacred nature of its own particular landscape. Tradition emphasized territorially and to stray from it required one to steal food resources from neighboring tribes. Non-Indians could not fathom the intensity and depth of the Indians spiritual attachment to their territories.

A steady population decline accompanied by widespread reports of destitution and hunger haunted those tribes without reserved lands. Despite hardship encountered, survival demanded innovation and adaptation. Being driven to the edge of extinction, Indians demonstrated again and again a strong will to survive. That determination notwithstanding, the widespread kidnapping, slavery and violence took a frightful toll on tribesmen and their cultures. Leadership lineages became scattered and displaced. Many ceremonies could no longer be held because access to sacred places was now denied. Cultural mandates to feed ceremonial guests could no longer be achieved by those who otherwise were able to hold public rituals. Finally, Christian missionaries gained control at many reservations under President Grant's Peace Policy of 1869. These folks were determined to destroy Indian culture and aboriginal belief systems that undergirded it.

The California superintendency attracted a succession of special investigators caused by constant reports of corruption that reached Washington. Special reports conducted in 1858, 1867 and 1883 clearly and thoroughly document the corruption and inefficiency plaguing government programs for Indians. President Grant's Peace Policy of 1869 inaugurated an era of acculturation under duress. Policy makers in the government declared the only path of salvation for surviving Indians would be Christianization, along with the adaptation of private ownership of property. Once these twin goals were realized, Indians would be rewarded with citizenship and take their place among the lower classes with other non-whites in American society. Reservation agents insisted their residents join churches and cease practicing the old ways. The General Allotment Act of 1887 forcibly divided reservation tribal lands, doling out small parcels to individual Indians and their families. If the allottee built a house, engaged in farming or ranching, sent his children to government Indian schools and renounced his tribal allegiance and otherwise pleased the agent, he would (after 25 years) receive title to his land and citizenship. Unlike tribal lands, these parcels would become taxable. The program was inaugurated in California in 1893. By 1930 approximately 2,300 allotments had been carved out of the tiny communal tribal reservation lands. Traditional Indians opposed the detribalizing goals of allotment. The uneven and unequal distribution of allotments was used by Indian agents to keep tribal populations divided and politically impotent. Nevertheless, considerable tribal resistance and pan-tribal organizing developed in opposition to allotment. The program ground to a halt in 1930 due to Indian opposition and failure of BIA to complete the necessary paperwork. The law was repealed in 1934. Thousands of acres of California Indian lands and millions of acres nationally were lost to this destructive and ill-conceived policy.

#### **PAN-INDIAN GROUPS, LANDLESS INDIANS AND RANCHERIAS**

Several hundred individual land allotments were distributed to California Indians from public lands found principally in northern California. Often times these were isolated havens from hostile neighbors. Many were assigned to clusters of individuals who were related by kinship and are likely core tribal members who otherwise had no lands. The tribal communities often held traditional ceremonies and participated in those of their more fortunate reservation Indians.

Southern California Indians were finally provided with recognition when several parcels of their former tribal domains were set aside by executive order beginning in 1873 with the establishment of the Tule River Indian Reservation. Fourteen Southern California Indian Reservations were set aside by executive orders beginning in 1891 and amended in 1898. Unfortunately, Indians in both Orange and Los Angeles counties were excluded from land distributions due in part to the value of coastal real estate. Nevertheless, small tribes from this area participated in pan-Indian organizations.

Reduced to severe destitution the majority of Indians struggled to support their families as landless laborers. Only 6,536 Indians were recognized and living on reservations about the turn of the century. Every Indian who survived to see the dawn of the 20th century had witnessed great suffering and the irreplaceable loss of numerous grandparents, mothers, fathers and children. Some lineages disappeared altogether. The nadir had been reached. Demographer S.F. Cook determined the California Indian population declined to fewer than 16,000 individuals in 1900. This figure represents a gut wrenching descent from over 300,000 into a vortex of massive death in just 131 years of colonization! These staggering losses prompted non-Indians of good will to assist Indian tribes in efforts to secure lands for the still numerous landless Indians.



Several Indian reform groups blossomed before and after the turn of the century. One of their earliest successes was a long legal effort to prevent the Cupa Indians from being dispossessed of their ancestral village of Warner's Hot Springs. While losing the legal case Cupa Indians and their allies managed to secure lands on the nearby Pala Indian Reservation in San Diego County. More important for the majority of landless Indians were the efforts of the Northern California Indian Association that goaded the BIA into enumerating landless Indians in 1905. The result of the survey and political pressure from Indians and their friends resulted in federal actions creating 36 new reservations and Rancherias in 16 Northern California counties. Rancherias were very small parcels of land aimed at provided homesites only for small bands of landless Indians. They are all located in Northern California. Unfortunately, the BIA's investigator failed to visit 12 other counties, thus ignoring the luckless Indians in those areas. Between 1933 and 1941 Congress authorized the enlargement of several Southern California reservations by 6492 acres. No rancherias or homesites were made available for landless Southern California Indians.

Important developments occurred as a result of political activism on the part of both tribes and pan-Indian organizations from 1921 to the present. Beginning with the early efforts of the Indian Board of Cooperation, numerous California Indians self-help organizations and tribes pushed for a lawsuit over the failure of the United States to compensate the Indians of California for the loss of their aboriginal lands. Congress relented and passed the Jurisdictional Act of 1928. This legislation allowed the Indians to sue the federal government and use the state Attorney general's office to represent them. Lacking control of their legal representative a controversial settlement was finally achieved in 1944. \$17,053,941.98 was offered for the failure of the government to deliver the 18 reservations promised in treaty negotiations of 1851-2. Incredibly, the government decided to deduct all of its "costs" of providing reservations, supplies and even the salaries of corrupt and do-nothing Indians agents native peoples had endured for nearly a century. After an-other long battle, little more than 5 million dollars were finally distributed on a per-capita basis to 36,095 California Indians in 1951. A paltry \$150. was distributed to surviving Indians. This parsimonious and unfair settlement prompted California Indians to seek further legal redress.

The efforts of California Indians to sue the federal government under the Jurisdictional Act of 1928 resulted in the creation of the federal Indian Claims Commission in 1946. This federal body allowed Indian groups to press for compensation to tribes over the theft of their lands in the 19th century. By August of 1951, twenty-three separate petitions had been filed by attorneys on behalf of tribes in California. After 20 years of tortuous maneuvering all separate claims were consolidated into a single case. A compromise settlement of \$29,100,000 was offered for 64,425,000 acres of tribal territory. After deduction of attorney's fees (\$12,609,000) and the addition of interest and about half a million left over from the first settlement the payment worked out to an offer of 47 cents per acre! The purchase of public domain lands in California in 1850 was never less than \$1.50 per acre. This outrageous offer offended many Indians who had pinned their hopes on a settlement that would provide seed money for desperately needed economic development. Despite bitter opposition by many of the original claimants, the federal government prepared a census of eligible Indians in preparation for an anticipated judgment. The BIA organized a series of meetings to convince the litigants to accept the settlement. Eventually a majority of the groups agreed, except the Pit River tribe. They offered strong, vociferous and persistent opposition. However, through questionable balloting, the government declared they had accepted the offer in 1964. Nearly 65,000 California Indians were deemed eligible to share in the settlement. Payments of little more than \$600 per person was distributed in 1968. What is of great significance here is the fact that the entire claims activities were conducted outside of normal court proceedings protected by the constitution. Thus, Indians are the only class of citizens in the United States who are denied constitutional protection of their lands by extra-constitutional means.

## **TERMINATION**

During the divisive and controversial land claims battle the BIA began to submit plans to end all services to California Indians and transfer all authority over federal Indian reservations to the State. This new policy, called Termination, was put into motion in 1951. Special agents were sent to prepare for the end of federal jurisdiction over tribal lands. At first the state was enthusiastic over the prospect of increasing its tax base with the anticipation of the privatization of federal trust properties. Termination became law in California under authority of the Rancheria Act of 1958. This statute allowed tribes to vote on a plan to divide communal tribal property into parcels to be distributed to its members. Distributees would receive title to their lands and be free to sell it and be obliged to pay property tax from that time forward. The BIA targeted the smallest, least organized and most isolated tribes to persuade them to accept this plan for cultural and tribal suicide. Government personnel promised acceptance would result in freedom and economic independence. They further made elaborate promises to upgrade squalid housing, pave roads, build bridges, construct water projects and even provide college scholarships in return for a vote to terminate. Between 1958 and 1970 twenty-three rancherias and reservations were terminated. Chronically high unemployment rates, low educational achievement and sometimes emergency medical needs soon forced many to make loans on, or sell their lands. Worse still, many BIA services like health, education were abruptly ended for all Indians in the state. Like the earlier allotment policy, the implementation of termination set in motion a series of events that

ultimately divested small tribes of 10,037 acres of land, disrupted tribal institutions and traditions and ultimately left these tribes more desperate, and impoverished than ever. Termination failed miserably to improve the socioeconomic or political power of the California Indians.

The occupation of Alcatraz Island in the San Francisco Bay, by nearly 100 American Indian College students in the fall of 1969 ushered in a new era of Indian affairs. A new generation of young, energetic and highly educated California Indians emerged during this period. Highly skeptical of the government they were committed to protecting tribal sovereignty. More important still, they found great value in tribal traditions. They encouraged traditional ceremonies, language retention and sought to remove impediments to the exercise of tribal religious practices. These developments paralleled a new generation of tribal leaders who would dynamically defend tribal rights. These activities made three things apparent; many California Indians were still landless, terminated tribes had been swindled, and some tribes had never been recognized by the federal government. However, reservation, landless and unrecognized tribesmen all shared lives of desperate poverty and little hope for employment or economic development.

In recognition of the growing sophistication of California Indians, the state legislature created the, Native American Heritage Commission in 1978. This all Indian commission works as a liaison between state, federal and tribal governments. It has been successful in protecting Indian burials, sacred places and providing access to government lands to harvest native plants for ceremonial practices and basketmaking.

To date 17 rancherias and reservations have reversed the disastrous termination process. Other tribes are currently pursuing legal avenues to reverse their termination status. Unrecognized tribes have vigorously pursued acknowledgment processes whose requirements are so impossibly demanding that many large tribes in Arizona and New Mexico could not today meet such standards of cultural continuity. Nevertheless, the Acagchemem of San Juan Capistrano the Muwekma of the San Francisco Bay area, and the Coast Miwok of Marin County are close to federal recognition and acquiring a trust land base.

Government developed economic development plans have a history of nearly a century of total failure. Currently more than thirty reservations and rancherias have established gaming businesses on their lands. Some are highly successful while other are not. Some public opposition to these activities seems to center around the fear that Indians may be cheated by their business partners. Such fears smack of paternalism and ignore the reality that few if any valuable resources can be found on Indian lands. Few private investors have come forward to work with Indian tribes outside of the gaming industry. With few choices, wise reservation leadership view gaming as an interim step toward greater economic independence. The Viejas Band of Kumeyaay Indians are the best example of how that dream can be achieved.

The amazing adaptive capabilities of California Indians has demonstrated the resiliency and genius of these much misunderstood and hardworking tribes can achieve under the most unfavorable of circumstances. We know, and our friends and counter parts in local and national governmental agencies must understand that only through the exercise of our tribal sovereignty can we successfully take our rightful place in our prosperous and free nation. We enter the next century filled with optimism.

**Professor Edward D. Castillo**

*Cahuilla-Luiseno*

[CA City and County Planning Agencies](#) • [Archaeological Terms](#) • [California Indian History](#) • [County Coroner List](#)

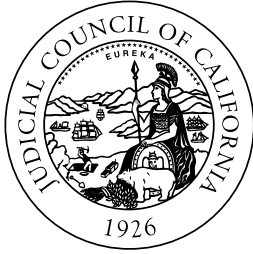
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# JUDICIAL COUNCIL OF CALIFORNIA

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

## **Why Is Notice Under The Indian Child Welfare Act (ICWA) So Hard To Get Right?<sup>1</sup>**

### **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 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 many 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:

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<sup>1</sup> Prepared by the Tribal/State Programs Unit, Center for Families, Children & the Courts, Judicial Council of California. Updated March, 2019

- 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;
  - 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); and
  - Government-sponsored militias organized against Indian tribes were allowed.<sup>2</sup>
- 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.<sup>3</sup>

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

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<sup>2</sup> 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). See also [California Indian History Primary Sources and Information 1846-1879](#).

<sup>3</sup> 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 on [May 9, 2019](#)<sup>4</sup>. 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, because of the historical events described above, the way people with Indian ancestry identify themselves may not be consistent with the way in which tribes are identified by the federal government.<sup>5</sup>

This is a map of historic California tribal territories:



<sup>4</sup> As of May, 2019. That list can be accessed [here](#).

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

This is a map showing names and locations of federally recognized tribes in California:



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 February 1, 2019, and can be found [here](#).

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 May 9, 2019 can be found [here](#).

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

If an individual is an enrolled member<sup>6</sup> 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 nation. 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 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

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<sup>6</sup> 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 enough for membership.

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 federal Bureau of Indian Affairs has 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](#)

### **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 with Indian 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 Indian ancestry are sometimes disconnected from their tribal communities and do not know whether 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.<sup>7</sup>

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 there is an obligation to "work with all of the tribes of which there is reason to know the child may be a member" to verify the child's status.<sup>8</sup> This allows 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 tribes<sup>9</sup>:

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:

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<sup>7</sup> 25 U.S.C.A. § 1679

<sup>8</sup> California Welf & Inst. Code § 224.2(g)

<sup>9</sup> These examples are taken from tribal constitutions found online at the National Indian Law Library's [Tribal Law Gateway](#). We have removed the names of the tribes because we do not know whether the membership criteria are still current.

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.

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 decide about tribal membership.

## **Indian Child Welfare Act Inquiry and Notice requirements under federal & California state law<sup>1</sup>**

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

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

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

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

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

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

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<sup>1</sup> Current as of December 2020.

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

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

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

**§23.11 Notice.**

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

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

...

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

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

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

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

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

(b) Notice must be sent to:

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

(2) The child's parents; and

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

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

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

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

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

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

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

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

## **California Welfare & Institutions Code**

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

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

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

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

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

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

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

reservation or in an Alaska Native village.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **California Rules of Court**

### **Rule 5.481. Inquiry and notice**

#### **(a) Inquiry**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(c) Notice**

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

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

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

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

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

### **Advisory Committee Comment**

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

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

#### **(a) Commencement of hearing**

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

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

#### **(b) Parentage inquiry**



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

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

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

(A) The participant knows or has reason to know the child is an Indian child;

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

(C) The child is or has ever been a ward of a tribal court; and

(D) Either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

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



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



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

**(d) Health and education information (§ 16010)**

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

**Judicial Council Forms**

<a href="#"><u>ICWA-010(A)*</u></a> 	<i>Indian Child Inquiry Attachment</i>
<a href="#"><u>ICWA-020*</u></a> 	<i>Parental Notification of Indian Status</i>

<a href="#"><u>ICWA-030*</u></a> 	<i>Notice of Child Custody Proceeding for Indian Child</i>
<a href="#"><u>ICWA-030(A)</u></a> 	<i>Attachment to Notice of Child Custody Proceeding for Indian Child (Indian Child Welfare Act)</i>



**JOB AID: ICWA Inquiry.** Overview of key requirements of AB 3176, clarifying how probation and child welfare are required to implement ICWA inquiry as of January 1, 2019

**The focus of ICWA inquiry and investigation** is always to determine whether the child is or may be an Indian child—i.e., a member of a federally recognized tribe or eligible for membership and the biological child of a member.

### **Early Investigation of Indian Status by the Agency**

AB 3176 confirms California law by clarifying that both probation and child welfare have a *continuing* duty to investigate a child’s possible Indian status beginning at *first contact* with the child and family.

- This applies to *all* children.
- The agency cannot wait to inquire until court action or removal is contemplated. When a report of child abuse or neglect is made, the reporting party must be asked if he or she has information that the child may be an Indian child (224.2(a)).<sup>1</sup>
- If probation or child welfare receives temporary custody of a child, it must inquire whether the child is or may be an Indian child and where the child, parents, or Indian custodian is domiciled (224.2(b); 306(b)).

### **“Reason to Believe” and Early Communication with Child’s Tribe**

When the agency’s early investigation gives “reason to believe” (224.2(e)) that the child is an Indian child, further inquiry is required. This inquiry must include:

- Interviewing the child, parents, Indian custodian, and extended family members;
- Contacting the Bureau of Indian Affairs (BIA) and California Department of Social Services; and
- Contacting tribes with which the child may be affiliated and others who may have information about the child’s potential status.

Contact with the tribes must include, at a minimum, making telephone, facsimile, or electronic mail contact with each tribe’s designated agent for receipt of ICWA notice and sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case. *At this point, however, there would be no requirement to send formal ICWA notice by registered or certified mail, return receipt requested.*

At the first court hearing, including the detention hearing in a dependency case, to ensure that the agency has fulfilled its duty of inquiry, the agency must submit materials to the court that evidence that the agency has asked the child, parents, legal guardian, Indian custodian, and all extended family members with which the agency has had contact whether the child is, **or may be**, an Indian child, and where the child and parents or Indian custodian are domiciled, i.e., if they live on an Indian reservation

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<sup>1</sup> This and all future references are to the Welfare and Institutions Code, unless otherwise stated.



or in an Alaska Native Village (224.2(b)). This evidence can be provided on the *Indian Child Inquiry Attachment* (form ICWA-010(A)), in the court report, or in some other form of attachment. What is important is to ensure that the names of the individuals asked, the questions that were asked, and the responses that were given are provided in enough detail to show that the requirements of Welfare and Institutions Code section 224.2(b) were fulfilled.

#### **“Reason to know” and ICWA requirements**

Based on the information that the agency received as a result of its inquiry, the agency should decide whether that information provided a “reason to believe” the child could be an Indian child.

- If so, the agency should conduct further inquiry, including interviewing the parents, child, available extended family members, and other relevant individuals;
- Contacting the California Department of Social Services and/or BIA; and, most important, engaging in an exchange of information with tribes with which the child is potentially affiliated (224.2(e)(1)–(3)).

*This exchange of information, however, does not constitute formal ICWA notice.* At this point the exchange of information includes at a minimum telephone, facsimile, or electronic mail contact to each tribe’s designated agent for receipt of notices under ICWA. If, during this initial or further inquiry, the agency has “reason to know” that the child is an Indian child, then the agency has a further obligation to provide the tribe or tribes with formal notice under ICWA.

Unlike “reason to believe,” which is not defined in the statute, the factors that give the agency and the court “reason to know” that the child is an Indian child are stated in section 224.2(d). They include any of the following circumstances:

- The child, a parent, a member of the extended family, or basically anyone else with an interest in the child tells the court that the child is an Indian child or that he or she has information indicating that the child is an Indian child.
- The residence or domicile of the child or parents or Indian custodian is on a reservation or Alaska Native village.
- There is information that the child is or was under the jurisdiction of a tribal court.
- The child or a parent possesses an identification card (or other document from a tribe or the BIA) indicating membership or citizenship in an Indian tribe

As discussed above, when there is reason to know that the child is an Indian child, the agency must:

- Compile and present evidence by way of report, declaration, or testimony that the agency has used due diligence, including at a minimum the above, to work with all tribes to determine the child’s status;
- Ensure that formal ICWA notice was provided to the tribe or tribes; and
- Treat the child as an Indian child unless and until the court can make a finding on the record that the child does not meet the definition of an Indian child.



### The Role of the BIA and CDSS in ICWA inquiry

Inquiring whether a child is an Indian child is required in **all** state child custody cases. The goal of inquiry is to determine Indian status -- i.e., membership/citizenship in a federally recognized tribe or political connection as eligible for membership and the child of a member of a federally recognized tribe.

Because of complicated law and history, heritage (descent/blood quantum derived from historic tribes) is often a determining factor in finding the child's contemporary federally recognized tribe.

Tribal membership standards commonly require demonstrated connection to an ancestor listed on an historic federal roll or schedule and/or a specified quantum of Indian blood. For this reason, detailed ancestry information must be provided to tribes to enable the tribe to exercise its sovereign authority to determine its membership. Neither the Bureau of Indian Affairs or the CDSS possess authority to make tribal membership determinations.

Due to complicated law and history, Identification of Indian status often begins from a racial designation or inquiry about Indian heritage. Respondents may not answer by identifying to a federally recognized tribe (something they may not know) but rather to an historic or ancestral tribal affiliation(s).

- The role of the Bureau of Indian Affairs and the CDSS is to assist in identifying the federally recognized tribes a child may be a member of or eligible for membership in. When the child's federally recognized tribe is not known or readily identified, inquiry should include questions about the child's affiliation with an historic or Tribal ancestral group.
- The Bureau of Indian Affairs and the CDSS may then assist with locating the identity of and contact information for federally recognized tribes affiliated with the identified ancestral group.
  - For example, if the ancestral group of "Cherokee" is identified, the Tribal Affiliation list maintained by the Bureau of Indian Affairs identifies to that historic Cherokee affiliation 4 separate federally recognized tribes. Similarly, if the ancestral group of "Paiute" is identified, the Tribal Affiliation list identifies to that historic Paiute affiliation 26 federally recognized tribes.

To assist in identifying and contacting the child's tribe, the Bureau of Indian Affairs makes available on its website the list of federally recognized tribes, and a tribal leaders directory at <https://www.bia.gov/tribal-leaders-directory>. It also makes available a list of *Indian Child Welfare Act; Designated Tribal Agents for Service of Notice* at <https://www.bia.gov/bia/ois/dhs/icwa>. The designated agent list identifies who the Bureau of Indian Affairs recommends as the tribe's contact for Indian child welfare purposes.

Federally recognized tribes may not correspond to historic (ancestral) tribal groups. Because Indians commonly identify to their historic tribal or ancestral group, the Bureau of Indian Affairs published in the Federal Register a *List of Designated Tribal Agents By (Historic) Tribal Affiliation*. (77 Fed. Reg. 45816, 45837 (August 1, 2012)). A corresponding *List of Designated Tribal Agents By Tribal Affiliation* may be accessed at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/webteam/docx/idc1-033200.docx>.



### Possible Inquiry Results

Inquiry is required in all state child custody cases and results in one of the following categories (that may be subject to change based upon additional information):

Category/Class	What it is	What it requires
Non-Indian	No indication that the child is Indian (member or eligible for membership and the child of a member)	There is a continuing duty to inquire about whether the child is or may be an Indian child throughout the life of all state child custody cases. ICWA does not otherwise apply.
<i>Reason to believe</i> (Heritage cases)	While at times a child's Indian status and identify of their tribe can be readily confirmed, commonly this information is not available. Rather, inquiry may produce vague statements of possible heritage and guesses at possible tribal affiliation, often to historic/ancestral tribal groups rather than to specific federally recognized tribes. AB 3179 refers to this group as <i>reason to believe the child may be an Indian child</i> .	<i>Reason to believe</i> requires only further inquiry/investigation to confirm Indian status and identification of child's federally-recognized tribe(s). Due diligence is required but ICWA does not otherwise apply.
<i>Reason to know</i>	Federal ICWA regulations and state law list facts that provide reason to know the child is Indian (i.e., a member or eligible for membership and the child of a member of a federally-recognized tribe).	Reason to know requires further inquiry and application of ICWA minimum federal standards to the case (e.g., notification, active efforts, expert testimony, placement preferences, etc.)
<i>Indian child</i>	Children whose Indian status can be confirmed (i.e., children who are a member or eligible for membership and the child of a member of a federally-recognized tribe)	Indian status requires application of ICWA minimum federal standards to the case (e.g., notification, active efforts, expert testimony, placement preferences, etc.) The child's tribe may exercise rights and opportunities provided by ICWA to the child's tribe.
non-federally-recognized Indian child	Non-federally-recognized tribes are groups that may be self-identified, petitioning for federal recognition, or state recognized. They do not enjoy the rights and privileges of federally recognized tribes.	WIC §306.6 permits a court to allow a child's non-federally-recognized tribe to participate in a juvenile case, similar to a CASA volunteer. ICWA does not otherwise apply.

# ICWA Inquiry & Further Inquiry At-a-Glance

Inquiry

Possible inquiry results

What is triggered by responses

Court & Agency have affirmative and continuing duty to inquire whether child for whom petition may be or has been filed, is or may be Indian child. (WIC § 224.2(a))

## Initial inquiry

Duty to inquire begins at initial contact, including inquiring of reporter of abuse/neglect if child may be Indian child. (WIC § 224.2(a))

If child is placed into temporary custody, Agency has duty to inquire whether child is Indian child. (WIC § 224.2(b))

At first appearance, court shall inquire of each participant present whether s/he knows or has reason to know child is an Indian child. Court shall instruct parties to inform court if party later receives information that provides reason to know child is Indian child. (WIC § 224.2(c) & (d))

## Further inquiry

If court or Agency has reason to believe child is Indian child, but does not have sufficient information to determine there is reason to know that child is Indian child, court and Agency shall make further inquiry as soon as practicable.

(WIC § 224.2(e))

Non-federally recognized Indian child

Indian child

Reason to know  
(WIC § 224.2(d))

Reason to believe  
(WIC § 224.2(e))

Non-Indian

- ICWA does not apply
- Court may allow child's non-federally recognized tribe to participate (WIC § 306.6)

- Child whose Indian status can be confirmed
- ICWA applies
- Tribe may intervene

- Further inquiry
- Treat as Indian child until court declares on record child is not Indian child

- Further inquiry

### Application of ICWA minimum federal standards:

- Notice
- Active efforts
- Qualified expert witness
- Placement preferences
- Findings (higher standards)
- Transfer

If court finds that proper and adequate further inquiry and due diligence have been conducted and there is no reason to know child is Indian child, court may make finding that ICWA does not apply; however, later receipt of new information requires further inquiry. (WIC § 224.2(i)(2))

- Continuing duty to inquire throughout life of case
- ICWA does not apply

# ICWA Inquiry, Notice & Findings Overview

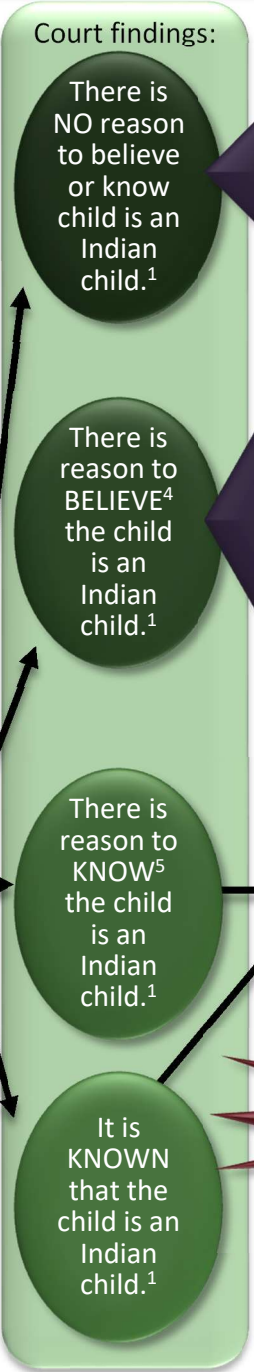
Agency completes initial ICWA inquiry under WIC §224.2(a) & (b), and if there is reason to believe child is Indian child<sup>1</sup>, further inquiry per §224.2(e). Agency shall include all inquiry details in court report.

**At first appearance, on record the court shall:**

Inquire of each party and each participant present whether s/he knows or has reason to know that the child is an Indian child.<sup>1</sup> (See specific questions.<sup>2</sup>)

Court shall instruct<sup>3</sup> all parties to inform court if they later receive information that provides reason to know the child is an Indian child.<sup>1</sup>

(Simply asking if the family has Native American / Eskimo heritage is no longer sufficient.)



**Findings:**

- ICWA notice is not necessary.
- ICWA does not apply.

Regular statutes apply.

At every hearing court shall instruct parties to inform<sup>3</sup> if any new ICWA information.

**Findings:**

- Agency has done further §224.2(e) inquiry and there is no reason to know child is Indian child; and
- ICWA does not apply.

**OR**

- Agency is ordered to complete further §224.2(e) inquiry, and
- File evidence of the inquiry, including contacts w/ extended family members, tribes, BIA, CA DSS, and/or others.
- Court assesses if "reason to know" child is Indian child.

**Findings:**

Agency has presented evidence of due diligence to identify and work with tribes child may be member of or eligible for.

**OR** Agency is required to exercise due diligence to identify, work with tribes to verify child's status, provide notice, and file proof of due diligence and notice.

**AND**

**AND** Notice has been given as required by law.

**Apply ICWA unless and until Court can confirm child is NOT an Indian child.<sup>6</sup>**

**Agency sends notice (ICWA-030) to:**

- Federally-recognized tribes (all bands, if family does not specify which),
- The Bureau of Indian Affairs, and
- The Secretary of the Interior.

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**Return receipts**

- Before proceeding, confirm that tribe(s) received notice at least 10 days before hearing.
- Continue to send notice for each hearing until responses from all tribes.

**What if no response from all tribes?**

- No more "60-day rule."
- Based on evaluation of underlying evidence, all of the circumstances and evaluation of agency due diligence reports, upon finding of "proper and adequate further inquiry and due diligence," court can determine there is "no reason to know" and find ICWA does not apply. (WIC §224.2(i)(2))

**Letter:** child not member, not eligible for membership

**Findings:**

- ICWA does not apply.
- No more notice unless further information gives reason to know child is Indian child.

**Letter:** child is member of tribe

**OR**

**Letter:** child eligible for membership and is biological child of member

All responses (letters and return receipts) must be part of court file.

**ICWA applies**

**Notice on ICWA-030 by registered mail, return receipt requested for hearings that culminate in foster care placement, TPR, preadoptive placement, or adoptive placement.**

All other notices to tribe same way as other parties.

**Relevant issues:**

- Active efforts
- Intervention
- Transfer
- Placement preferences
- Qualified expert witness
- Findings (higher standards)
- Tribal customary adoption



**1 Definition of Indian child:**

25 U.S. Code § 1903(4): Indian child means 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; and  
65 WIC §224.1(b): An unmarried person who is 18 years of age or over, but under 21 years of age, who is a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe, and who is under the jurisdiction of the dependency court, unless that person or their attorney elects not to be considered an Indian child for purposes of the Indian child custody proceeding.

**2 At the first appearance in court of each party, the court must ask each participant present at the hearing:**

**From JV-410:**

- Whether the participant is aware of any information indicating that the child is a member or citizen or eligible for membership or citizenship in an Indian tribe or Alaska Native Village and if yes, the name of the tribe or village;
- Whether the residence or domicile of the child, either of the child’s parents, or Indian custodian is on a reservation or in an Alaskan Native Village, and if yes, the name of the tribe or village;
- Whether the child is or was ever a ward of a tribal court, and if yes, the name of the tribe or village; and
- If the child, either of the child’s parents, or the child’s Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native Village, and if so, the name of the tribe or village.

Or...

**§ 224.2(c)**

Ask whether the participant knows or has reason to know that the child is an Indian child. (see fn. 5 for “reason to know”)

**Rule 5.668(c), whether:**

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

**3 Rule 5.668(c)(2)** The court must also instruct all parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child, and order the parents, Indian custodian, or guardian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

**4** The Agency should be conducting further inquiry before the first hearing in court, except in an emergency situation per WIC §319(b)(1)-(9).  
**Rule 5.668(c)(3)** If there is reason to believe that the case involves an Indian child, the court must require the agency to conduct further inquiry per WIC §224.2(e).

**5 WIC §224.2(d) Reason to know.** The circumstances that may provide reason to know the child is an Indian child include the following:

- Person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child’s extended family informs the court that the child is an Indian child;
- The residence or domicile of the child, the child’s parents, or Indian custodian is on a reservation or in an Alaska Native village;
- Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
- The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;
- The court is informed that the child is or has been a ward of a tribal court; or
- The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.

**Rule 5.668(d)** If it is known, or there is reason to know, the case involves an Indian child, the court must proceed in accordance with rules 5.481 et seq. and treat the child as an Indian child unless and until the court determines on the record after review of the report of due diligence described in WIC §224.2(g) that the child does not meet the definition of an Indian child.

**6 WIC 224.2(i) Treat child as Indian child**

When there is reason to know that the child is an Indian child, **the court shall treat the child as an Indian child unless and until** the court determines on the record and after review of the report of due diligence as described in WIC §224.2(g), and a review of the copies of notice, return receipts, and tribal responses required pursuant to §224.3, that the child does not meet the definition of an Indian child as used in §224.1 and the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.).

**SAMPLE COURT ICWA INQUIRY ON THE RECORD:****A. Questions for the Agency**

1. Did agency staff ask the individual reporting abuse/neglect whether the individual had any information suggesting the child might be an Indian child?
2. Did agency staff ask both parents about their possible tribal affiliation, and whether the child might be an Indian child?
3. Did the agency ask extended family members and others who have an interest in the child whether they had any information suggesting the child might be an Indian child?
4. What information about tribal possible affiliation was obtained during all of this? Was there anything suggesting the child might be an Indian child?

**B. Questions for Parents (same for extended family members present in court)**

1. Do you know if you or your family have Indian or Native American ancestry/heritage?
  - a. If Yes, please tell me about your Indian or Native American ancestry/heritage?
  - b. If Yes, is the ancestry/heritage on your mother's or father's side of the family?
  - c. If Yes, how did you learn of your Indian or Native American ancestry/heritage?
  - d. If Yes, besides yourself, are there other members of your family that may have knowledge about your family's Indian or Native American ancestry/heritage?
2. Do you know if you or your family are affiliated with an Indian tribe?
3. Do you think that you, your children, your parents, grand-parents or great-grand parents are/were members of a tribe?
4. Do you think that you, your children, your parents, grand-parents or great-grand parents have applied to be members of a tribe?
5. Have you or the child ever lived on an Indian reservation or Alaska Native Village?
6. Do you know if any members of your family have ever lived on federal trust land, or an Indian reservation, or Alaska Native Village?
7. Have any members of your family ever participated in federal programs/services, such as the Title VII Indian Education Program or Tribal TANF ?
8. Have you or any family member received medical treatment at an Indian health clinic or public health services hospital?
9. Have you or any family member attended an Indian school?

**C. Questions for other participants**

1. Does anyone present know or have any information giving them reason to know that the child is an Indian child?

**D. Instructions to all participants**

If either the agency or the court's inquiry has given "reason to believe" the child may be an Indian child, the court must order the agency to complete "further inquiry" (if it has not already done so) in accordance with section 224.2(e) of the Welfare and Institutions Code and file proof of that further inquiry including all individuals interviewed, contacts with the BIA, CDSS and the tribe(s) the family may be affiliated with and the results of that inquiry.

If either the agency or the court's inquiry gave "reason to know the child is an Indian child (as defined in section 224.2(d) of the Welfare and Institutions Code) the court must:

- order the agency to provide formal notice to the tribe(s) the child may be affiliated with;
- order the agency to provide evidence by way of report, declaration, or testimony that the agency has used due diligence to identify and work with all of the tribes that the child may be affiliated with;
- treat the child as an Indian child (ie. apply all of ICWA's substantive requirements) until the court can determine that the child is NOT an Indian child.

If neither the agency nor the court's inquiry has given "reason to believe" or "reason to know" the court shall instruct all parties to inform the court if they subsequently receive information that provides reason to believe or reason to know the child is an Indian child.



## Juvenile Dependency Courts

### Recommended Legal Findings and Orders under the Indian Child Welfare Act (ICWA)\*

- |             |  |
|-------------|--|
| <b>I.</b>   | <p><b>Inquiry (at the initial hearing, the dispositional hearing, hearing to terminate reunification services, and hearing to select a permanent plan in every case) (25 C.F.R. § 23.107; WIC, § 224.2; CRC 5.481(a))</b></p> <p>A. The court finds that the agency and the court have inquired whether the child is or may be an Indian child; and</p> <p>B. The court finds that the ICWA-010(A) attachment has been completed and is in the court file; and</p> <p>C. The court finds that both parents and the Indian Custodian (if any) have completed the ICWA-020 and those documents are in the court file; and</p> <p>D. The court finds, after the agency has inquired and the court has inquired,</p> <ol style="list-style-type: none"> <li>1. that there is no reason to believe or reason to know that the child is or may be an Indian child; or</li> <li>2. that there is reason to believe the child may be an Indian child; and             <ol style="list-style-type: none"> <li>a. the agency has provided evidence that it has completed further inquiry as required by WIC 224.2(e) including interviewing the parents, Indian custodian, and extended family and has contacted the BIA to obtain information contained in Welfare and Institutions Code section 224.3(a)(5), contacting the BIA and CDSS and multiple contacts to tribes that the child may be affiliated with by telephone, facsimile or email to determine the child's status; or</li> <li>b. the agency has not provided evidence that it has completed further inquiry as required by WIC 224.2(e) and is ordered to complete such further inquiry and file proof with the court; or</li> </ol> </li> <li>3. that there is reason to know the child is an Indian child; and             <ol style="list-style-type: none"> <li>a. the agency has filed evidence that it has used due diligence to identify and work with all tribes of which there is reason to know the child may be a member to verify the child's status; or</li> <li>b. the agency is ordered to use due diligence to identify and work with all tribes of which there is reason to know the child may be a member to verify the child's status and file proof of such due diligence with the court; and</li> <li>c. the agency is required to provide notice to the child's tribe(s) in accordance with WIC § 224.3; and</li> <li>d. the court will treat the child as an Indian child until the court is able to determine that the child is not an Indian child; or</li> </ol> </li> <li>4. the child is an Indian child. The child's tribe is _____ . The Indian Child Welfare Act applies.</li> </ol> |
| <b>II.</b>  | <p><b>Application (at any hearing) (ICWA § 1903(1) &amp; (4); WIC, § 224.1(a) &amp; (d); CRC 5.480)</b></p> <p>A. The child may be an Indian child, and therefore the act may apply, and the agency shall make further inquiry and efforts to determine the child's status; or.</p> <p>B. The child is an Indian child, because the court has proof of tribal membership or the tribal determination received by the court indicates that the child is a member or is eligible for membership, or.</p> <p>C. The child is not an Indian child, because the tribal determination received by the court indicates that the child is not a member and is not eligible for membership. This finding may be revisited if new information is received that gives reason to believe or reason to know the child is an Indian child.</p>   |
| <b>III.</b> | <p><b>Tribal Representative/Intervention (at every hearing) (ICWA § 1911(c); WIC, § 224.3(a)(5)(H)(ii), 224.4; CRC 5.482(d) &amp; 5.534(e))</b></p> <p>A. The (<i>name of tribe</i>) _____ Tribe has acknowledged that the child is a member of or is eligible for membership in the tribe and will monitor the case.</p> <p>B. The (<i>name of tribe</i>) _____ Tribe has designated (<i>name of representative</i>) _____ to be the tribe's representative and is entitled to the rights</p>   |

\*All citations in this chart are to the Indian Child Welfare Act (ICWA) (25 U.S.C. 1901 et seq.), federal regulations at 25 C.F.R. Part 23, California Welfare and Institutions Code (WIC), and California Rules of Court (CRC).

<p>listed in Judicial Council form ICWA-040, <i>Notice of Designation of Tribal Representative in a Court Proceeding Involving an Indian Child</i>.</p> <p>C. The <sup>69</sup>(<i>name of tribe</i>) _____ Tribe has intervened in this case and will be treated as a party to the proceedings.</p>
<p><b>IV. Continuances (all hearings except detention) (ICWA § 1912(a); WIC, § 224.3(a)(5)(H)(iv); CRC 5.482(a)(3)</b>  Upon request, this court grants the parent, Indian custodian, or tribe a continuance of up to 20 days to prepare for the hearing.</p>
<p><b>V. Appointment of Counsel (at every hearing) (ICWA § 1912(b); WIC, § 317(a)(2))</b></p> <p>A. The Court finds that the parent(s) and/or Indian custodian appear to be indigent; and</p> <p>B. The Court hereby appoints counsel to represent the parent(s) and/or Indian custodian; or</p> <p>C. The Court finds that the parent(s) and/or Indian custodian do not appear to be indigent.</p>
<p><b>VI. Notice (at every hearing) (ICWA § 1912(a); WIC, § 224.3; CRC 5.481(c))</b></p> <p>A. The hearing is an “Indian child custody proceeding” (WIC § 224.1(d)(1)) because there is “reason to know” the child is an Indian child and the hearing may culminate in the removal, foster care placement, preadoptive placement, adoptive placement of the child or termination of parental rights to the child. The court finds that:</p> <ol style="list-style-type: none"> <li>1. Notice in form ICWA-030, <i>Notice of Child Custody Proceeding for Indian Child</i>, has been provided by certified mail with return receipt requested to all tribes of which the child may be a member or eligible for membership and to the BIA;</li> <li>2. Notice to the tribe(s) was addressed to the tribal chairperson unless the tribe has designated another agent for service of ICWA notice;</li> <li>3. Proof of notice has been filed with the court and includes a copy of the notices sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor’s Indian status.</li> </ol> <p>B. There is “reason to know” the child is an Indian child, but the hearing is not one that hearing may culminate in the removal, foster care placement, preadoptive placement, adoptive placement of the child or termination of parental rights to the child. The court finds that notice has been provided to the child’s tribe(s) in the same manner as to other parties.</p>
<p><b>VII. Tribal Consultation (Dispositional &amp; Review Hearings) (CRC 5.690(c)(2)(C) &amp; 5.708(f)(7))</b></p> <p>A. The Court finds that in developing the case plan the agency has:</p> <ol style="list-style-type: none"> <li>1. Solicited and integrated into the case plan the input of the child’s identified Indian tribe; <b>or</b></li> <li>2. Not solicited and integrated into the case plan input from the child’s identified Indian tribe; <b>and</b> <ol style="list-style-type: none"> <li>a) the Court orders the agency to solicit and integrate into the case plan input from the child’s identified Indian tribe, <b>or</b></li> <li>b) the Court finds that the child’s identified Indian tribe was unable, unavailable or unwilling to participate in development of the case plan.</li> </ol> </li> </ol>
<p><b>VIII. Standards for Emergency Removal/Detention (25 CFR §23.113; WIC §§ 224.1(l), 305.5(g), 315, 319(b),(d),(e) &amp; (i), 319.4; CRC 5.484, 5.676(b) &amp; (d))</b></p> <p>A. It is known or there is reason to know the child is an Indian child;</p> <p>B. Emergency removal or continued emergency placement of the child is necessary to prevent imminent physical damage or harm to the child;</p> <p>C. The petition requesting emergency removal or continued emergency placement includes all of the evidence and information required by section 319(b) &amp; (d) of the <i>Welfare and Institutions Code</i> and CRC, rule 5.484(a).</p>
<p><b>IX. Detriment and Standard of Proof (at removal unless an emergency, disposition &amp; termination of parental rights hearings) (ICWA § 1912(e) &amp; (f); WIC, §§ 361(a)(6), 361.7, 366.26(c)(2)(B); CRCs 5.484(a), 5.484(a))</b></p> <p>A. For a non-emergency detention and removal for foster-care placement, the court finds by <i>clear and convincing</i> evidence, including the testimony of one or more qualified expert witnesses, that the continued custody of the child by the parent, legal guardian, or Indian custodian is likely to result in serious emotional or physical danger to the child.</p> <p>B. For termination of parental rights, the court finds by evidence <i>beyond a reasonable doubt</i>, including the testimony of one or more qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.</p>
<p><b>X. Active Efforts (at every hearing where the child is out of the custody of his or her parents, Indian custodians, or legal guardians and is placed in foster care [stranger or relative or group home]) (ICWA § 1912(d); WIC, §§ 361(d), 361.7; CRCs 5.484(c), 5.485(a)(1))</b></p>

- A. If a <sup>70</sup>tribe has indicated that the child would be eligible for enrollment if certain steps are followed, the court finds that the agency has made active efforts by taking steps to secure tribal membership. (CRCs 5.482(c), 5.484(c).)
- B. The court finds, after reviewing the report, that active efforts have been made to provide culturally appropriate services and rehabilitative programs designed to prevent the breakup of the Indian family, that these efforts include available resources of native agencies, the tribe and extended family, and that these efforts have been unsuccessful.
- C. The court finds that the agency has incorporated culturally appropriate services into the case plan for the child and the parent(s) or Indian custodian.
- D. The court finds that the agency has consulted with the child's tribe in development of the case plan for the child and the parent(s) or Indian custodian.

**XI. Placement Preferences (at every hearing where the child is out of the custody of his or her parents, Indian custodians, or legal guardians and is placed in foster care [stranger or relative or group home]) (ICWA § 1915; WIC, § 361.31; CRC 5.484(b))**

- A. The court finds that  
the agency adhered to the placement preferences under the act when placing the child;  
the child is detained in a placement that adheres to the placement preferences under the act; and  
the agency has consulted with the child's tribe and Indian organizations concerning the appropriate placement of the child.
- OR
- B. The court finds good cause to deviate from the placement preferences under the act on the grounds that \_\_\_\_\_.
- OR
- C. The court finds that the placement does not comply with the ICWA placement preferences and finds no good cause to deviate from the placement preferences and orders \_\_\_\_\_.

**XII. Jurisdiction and Transfer (at any hearing) (ICWA § 1911; WIC, § 305.5; CRC 5.483)**

- A. The court finds that the child resides or is domiciled on the reservation of the \_\_\_\_\_ Tribe or that the child is under the jurisdiction of the court of the \_\_\_\_\_ Tribe, and, accordingly, the \_\_\_\_\_ Tribe has exclusive jurisdiction.
- B. The court finds that this juvenile court and the court of the child's tribe have concurrent jurisdiction.
- C. The (*specify tribe or parent or Indian custodian*) \_\_\_\_\_ has petitioned this court to transfer the proceedings to the tribal court, and finding no good cause not to transfer, this court transfers the case to the tribal court of (*name of tribe*) \_\_\_\_\_ Tribe. The court will terminate jurisdiction only after receiving confirmation that the tribal court has accepted the transfer, and will make orders consistent with WIC 305.5(d) at that time.
- D. After holding an evidentiary hearing, this court finds that the (*specify tribe or parent or Indian custodian*) \_\_\_\_\_ has petitioned this court to transfer the proceedings to the tribal court, and the court finds that the following reason is good cause not to transfer the case to the tribal court:
1. The child's parent objects to the transfer;
  2. The child's tribe does not have a tribal court, or any other administrative body as defined in section 1903 of the act; or
  3. The tribal court of the child's tribe declined the transfer.
- E. After holding an evidentiary hearing, this court finds that the (*specify tribe or parent or Indian custodian*) \_\_\_\_\_ has petitioned this court to transfer the proceedings to the tribal court, and the court finds that the following circumstances in the case constitute in the court's discretion good cause not to transfer the case to the tribal court \_\_\_\_\_ In reaching this conclusion the court has not relied on any of the factors set out in WIC 305.5(e)(2)


**XIII. Permanency Planning (each hearing after disposition when the child's tribe has been identified) (WIC, §§ 358.1, 361.5, 366.21, 366.22, 366.24, 366.25, 366.26; CRCs 5.708 (c)(2), 5.715(b)(5), 5.720(b)(4), 5.722(b)(3), 5.725(d)(1), 5.725(d)(2)(c)(vi))**

- A. The Court finds that the proposed permanent plan and placement:
- a. complies with the ICWA placement preference requirements (see X above); or
  - b. there is good cause to deviate from the placement preferences under the act on the grounds that \_\_\_\_\_ or
  - c. the plan does not comply with ICWA requirements and the agency is ordered \_\_\_\_\_
- B. The Court finds that the agency has consulted with the tribe about the appropriate permanent plan for the child, and has specifically discussed whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful; or

C. <sup>71</sup>The Court finds that the agency has not consulted with the tribe about the child's permanent plan and whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful and the agency is ordered to consult with the tribe.

**In re A.M., 47 Cal.App.5th 303 (2020)**

260 Cal.Rptr.3d 412, 20 Cal. Daily Op. Serv. 3030, 2020 Daily Journal D.A.R. 3032

 KeyCite Yellow Flag - Negative Treatment  
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47 Cal.App.5th 303  
Court of Appeal, Fourth District, Division 2,  
California.

IN RE A.M. et al., Persons Coming Under the  
Juvenile Court Law.  
Riverside County Department of Public Social  
Services, Plaintiff and Respondent,  
v.  
A.M., Defendant and Appellant.

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Filed 3/5/2020  
|

Certified for Partial Publication.\*

**Synopsis**

**Background:** County Department of Public Social Services (DPSS) sought to terminate mother's parental rights to her two children. The Superior Court, Riverside County, No. RIJ1700999, [Matthew Perantoni, J.](#), terminated mother's parental rights. Mother appealed.

**Holdings:** The Court of Appeal, [Codrington, J.](#), held that:

[1] DPSS and Juvenile Court did not have "reason to know" that children were Indian children, and thus, the **Indian Child Welfare Act** (ICWA) notice requirements were not triggered, and


[2] DPSS's inquiry into whether children were Indian children was appropriate and complied with ICWA and state law.


Affirmed.


**Procedural Posture(s):** On Appeal; Petition to Terminate Parental Rights.


West Headnotes (14)

[1] **Indians**  Dependent Children; Termination of Parental Rights


**Indians**  Notice of pending state proceedings and right to intervene


A juvenile court must determine whether proper notice was given under **Indian Child Welfare Act** (ICWA) and whether ICWA applies to the dependency proceedings. **Indian Child Welfare Act** of 1978 § 2,  25 U.S.C.A. § 1901 et seq.

[2] **Indians**  Actions and proceedings in general

When the facts are undisputed, the Court of Appeal reviews independently whether the requirements of **Indian Child Welfare Act** (ICWA) have been satisfied in a dependency proceeding. **Indian Child Welfare Act** of 1978 § 2,  25 U.S.C.A. § 1901 et seq.

[3] **Indians**  Actions and proceedings in general

The Court of Appeal reviews a juvenile court's **Indian Child Welfare Act** (ICWA) findings under the substantial evidence test, which requires the Court of Appeal to determine if reasonable, credible evidence of solid value supports the juvenile court's order in a dependency proceeding. **Indian Child Welfare Act** of 1978 § 2,  25 U.S.C.A. § 1901 et seq.

[4] **Infants**  Dependency, Permanency, and Rights Termination

The Court of Appeal must uphold a juvenile court's orders and findings in a dependency proceeding if any substantial evidence, contradicted or uncontradicted, supports them, and the Court of Appeal resolves all conflicts in favor of affirmance.



[5] **Indians**—Notice of pending state proceedings and right to intervene

Notice to a tribe is required, under federal and state law, when the court knows or has reason to know a child in a dependency proceeding is an Indian child. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.; Cal. Welf. & Inst. Code § 224 et seq.

1 Cases that cite this headnote

[6] **Indians**—Actions and proceedings in general

The courts and county welfare departments have an affirmative and continuing duty to inquire whether a child for whom a dependency petition 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; this notice requirement, which is also codified in California law, enables a tribe to determine whether the child is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.; Cal. Welf. & Inst. Code §§ 224 et seq., 300.

[7] **Indians**—Notice of pending state proceedings and right to intervene

If the notice duty is triggered under **Indian Child Welfare Act** (ICWA) in a dependency proceeding, the notice to a tribe must include a wide range of information about relatives, including grandparents and great-grandparents, to enable the tribe to properly identify the children's Indian ancestry. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.

[8] **Indians**—Actions and proceedings in general

Any violation of the **Indian Child Welfare Act** (ICWA) notice duty in a dependency proceeding requires the appellate court to vacate the offending order and remand the matter for further proceedings consistent with ICWA requirements. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.

[9] **Indians**—Actions and proceedings in general

A violation of any higher state standard, above and beyond what the **Indian Child Welfare Act** (ICWA) itself requires, must be held harmless unless the appellant can show a reasonable probability that he or she would have enjoyed a more favorable result in the absence of the error in a dependency proceeding. **Indian Child Welfare Act** of 1978 § 111, 25 U.S.C.A. § 1921; Cal. Welf. & Inst. Code § 224(d).

[10] **Indians**—Actions and proceedings in general  
**Indians**—Notice of pending state proceedings and right to intervene

Mother's challenge to Juvenile Court's compliance with the inquiry and notice requirements of the **Indian Child Welfare Act** (ICWA) was applicable to court's findings underlying order terminating mother's parental rights, not dispositional order or six-month review order continuing her services, and thus, current ICWA statutes, rather than those in place when notices were sent and other orders were entered, applied on mother's appeal of termination order; mother did not file writ petition for six-month review order and did not object to dispositional order. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.; Cal. Welf. & Inst. Code § 224 et seq.

[11] **Indians**—Notice of pending state proceedings and right to intervene

County Department of Public Social Services (DPSS) and Juvenile Court did not have “reason to know” that children were Indian children, and thus, the **Indian Child Welfare Act** (ICWA) notice requirements were not triggered in dependency proceeding; only specific information mother provided was statement that she was told and believed that she may have Indian ancestry with two tribes but was not registered, and mother listed her grandfather as having possible Indian heritage but never provided additional information concerning her Indian ancestry. **Indian Child Welfare Act** of 1978 § 102, 25 U.S.C.A. § 1912(a); Cal. Welf. & Inst. Code § 224.2 (d).

1 Cases that cite this headnote

[12] **Indians**—Actions and proceedings in general

County Department of Public Social Service’s (DPSS) inquiry into whether children were Indian children based upon mother’s statement that she was told and believed that she may have Indian ancestry was appropriate and complied with **Indian Child Welfare Act** (ICWA) and state law in dependency proceeding; both mother’s biological parents were deceased, mother had no information concerning any other relatives, DPSS could not contact mother’s parents or other relatives to obtain additional information, and DPSS requested additional information from mother who was unable to provide any. **Indian Child Welfare Act** of 1978 § 102, 25 U.S.C.A. § 1912(a); Cal. Welf. & Inst. Code § 224.2.

1 Cases that cite this headnote

[13] **Indians**—Actions and proceedings in general

**Indian Child Welfare Act’s** (ICWA) inquiry requirement does not obligate the court or Department of Public Social Services (DPSS) to cast about for investigative leads in a dependency proceeding. **Indian Child Welfare Act** of 1978 § 102, 25 U.S.C.A. § 1912(a).

[14] **Indians**—Actions and proceedings in general

There is no need for further inquiry under **Indian Child Welfare Act** (ICWA) if no one has offered information that would give the court or Department of Public Social Services (DPSS) **reason to believe** that a child involved in a dependency proceeding might be an Indian child; this includes circumstances where parents fail to provide any information requiring followup or if the persons who might have additional information are deceased or refuse to talk to DPSS. **Indian Child Welfare Act** of 1978 § 102, 25 U.S.C.A. § 1912(a).

**Witkin Library Reference:** 16 Witkin, Summary of Cal. Law (11th ed. 2017) **Juvenile Court Law**, § 154 [Duty To Inquire into Indian Status; In General.]

**\*\*414** APPEAL from the Superior Court of Riverside County. **Matthew C. Perantoni**, Judge. Affirmed. (Super.Ct.No. RIJ1700999)

**Attorneys and Law Firms**

**John L. Dodd**, Tustin, under appointment by the Court of Appeal, for Defendant and Appellant.

**Gregory P. Priamos**, County Counsel, James E. Brown, Anna M. Marchand, and Prabhath D. Shettigar, Deputy County Counsels, for Plaintiff and Respondent.

## OPINION

CODRINGTON, Acting P. J.

\*307 I

## INTRODUCTION

A.M. (Mother) appeals from the juvenile court’s order terminating her parental **\*\*415** rights as to her two children, 11-year-old A.M. and six-year-old J.T., Jr. (J.T.).<sup>1</sup> On appeal, Mother argues (1) the order terminating her parental rights must be reversed because the Riverside County Department of Public Social Services (DPSS) failed to comply with the inquiry and notice requirements of the **Indian Child Welfare Act** (ICWA) (**25 U.S.C. § 1901 et seq.**) and with **Welfare and Institutions Code**<sup>2</sup> **section 224 et seq.**; and (2) all orders must be reversed because the juvenile court failed to comply with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) because California did not have subject matter jurisdiction. For the reasons explained herein, we reject Mother’s contentions and affirm the judgment.

## II

## FACTUAL AND PROCEDURAL BACKGROUND

On December 2, 2017, DPSS received an immediate response referral with allegations of general neglect and sexual abuse. It was reported that Mother had allowed her two sons to go into a hotel room for hours with an 18-year-

old male stranger who sexually abused them. After Mother discovered the sexual abuse, she failed to report the alleged crime to law enforcement. Instead, the suspect disclosed what he had done to his mother, who then drove the suspect to the police station to turn himself in.

When the social worker interviewed the boys, A.M. disclosed that he attended the third grade at an elementary school in Beaumont, but could not recall the last time he had attended school. He and J.T. had previously lived “with their father someplace far away as well.” A.M. “believed they were living in Los Angeles with his father.” They had “lived in a number of homes with friends.” A.M. also reported Mother did not have much money so they **\*308** had stayed in more than five or six homes with people willing to help them, “and all while he was eight years old.” He and his family moved into their present hotel two days prior, but previously had lived with “various friends, family members of friends, and people they did not know before.” A.M. also disclosed several incidents of domestic violence involving Mother and her significant other. J.T. stated that he “reside[d] with friends, his mother, his brother, his dad, ‘Uncle Grandpa,’ and ‘Batman.’ ”

The social worker also interviewed and drug tested Mother due to her behavior. Mother drug tested positive for methamphetamine and **amphetamine**. Mother admitted to smoking methamphetamine. She reported that she had been diagnosed with anxiety, depression, and **attention deficit hyperactivity disorder** (ADHD) and was not on medication. When asked about her residence plan, Mother stated that she and her boys will stay with a friend in Victorville or she will find another place to go for the night. Her safety network consisted only of J.L., also known as “ ‘Batman,’ ” because her former foster family “moved out of state and abandoned her and the children.” Mother also had a few friends who helped her by giving she and her sons a place to stay for a few days. Due to concerns for the children’s safety, J.T. and A.M. were taken into protective custody.

When questioned about the children’s placement, Mother informed the social **\*\*416** worker that J.T.’s father resided in Arizona and is the only father A.M. had ever known.<sup>3</sup> Mother reported there was a family law case open in Las Vegas, Nevada. Father J.T. did not bring the boys back to Mother on time after a visit earlier this year. Mother did not believe Father J.T. could care for the children, because he was not stable and had a problem with alcohol.

The social worker thereafter contacted Father J.T. He stated that he lived in Arizona with relatives but was unable to provide a physical address, because he had just moved in. He and the paternal grandmother had been primarily caring for the children since they were babies. The children

**In re A.M., 47 Cal.App.5th 303 (2020)**

260 Cal.Rptr.3d 412, 20 Cal. Daily Op. Serv. 3030, 2020 Daily Journal D.A.R. 3032

were with his mother for more than a year and with him for approximately five months in Las Vegas earlier this year. He also stated that Mother came to get A.M. and left with both children after a visit and that Mother has had the children in her care for only a few months. Father J.T. admitted having a drug and alcohol history and wanted the children to be released to him. He also agreed to contact the paternal grandmother to discuss possible placement of the children in her care.

**\*309** On December 5, 2017, a petition was filed on behalf of the children pursuant to section 300, subdivisions (b) (failure to support), (d) (sexual abuse), and (g) (no provision for support).

Regarding ICWA, Mother was “unsure if she [was] of American Indian descent” and “denied that she or the children [were] registered with a tribe.” Fathers J.T. and R.O. denied American Indian ancestry. At the detention hearing, both Mother and Father J.T. indicated having no American Indian ancestry. However, in Mother’s ICWA-020 form, she checked the box indicating that she was or may be a member of, or eligible for membership in a federally recognized Indian tribe and wrote the tribe’s name as “unknown.” She also checked the box indicating that one or more of her parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe and wrote “MGF, MGA[C.M.]” beside the box. In Father J.T.’s ICWA-020 form, he stated that he had no Indian ancestry.

On December 6, 2017, the juvenile court formally removed the children from parental custody and found that ICWA may apply. The court authorized an Interstate Compact for Placement of Children (ICPC) with the state of Arizona and directed DPSS to continue with their assessment of relatives for placement.

On December 15, 2017, DPSS filed an ICWA-030 Notice of Child Custody Proceeding (ICWA notice) as to each child. In the ICWA notice, DPSS included each child’s name, date and place of birth, and attached each child’s birth certificate. The ICWA notices also included Mother’s name, former address, and date and place of birth, as well as Father J.T.’s name, former address, and date and place of birth. As to A.M., the ICWA notice included Father R.O.’s name, current address, and date of birth. Place of birth is indicated as “Unknown.” Under the tribe box for Mother, the ICWA notices stated, “Bureau of Indian Affairs [ (BIA) ], No Tribe Specified.” Under the tribe box for Father J.T. and Father R.O., the ICWA notices stated, “Does not apply.” The ICWA notices also included the maternal grandmother’s and maternal grandfather’s names, former addresses, dates and places of birth, and dates and

places of death. No tribe was **\*\*417** specified for either maternal grandparent. The ICWA notices further noted the paternal grandmother’s name (Father J.T.’s mother), current address and birth date. Under tribe, DPSS noted “Does not apply.” No information was provided as to A.M.’s paternal grandmother or either child’s paternal grandfather. “M.T.” is noted to be J.T.’s maternal great-grandmother with a current address of Los Angeles, California. No additional information was provided as to the children’s maternal great-grandparents or Mother’s grandfather’s name (C.M.), or either child’s paternal great-grandparents.

**\*310** DPSS mailed the ICWA notices by certified mail on December 14, 2017, to the BIA. On December 29, 2017, the BIA acknowledged receipt of the ICWA notices and indicated that it is returning the “letter of inquiry due to insufficient information to determine tribal affiliation ([25 CFR 23.11 \(d\)](#)) or you have not identified a tribe. When additional information becomes available, please forward the Notice to the appropriate tribe(s) using the latest ICWA Designated Tribal Agents List.”

On December 21, 2017, Mother informed the social worker that “she was told that she has Blackfoot and Cherokee tribe affiliation but was not registered.” She also stated that she “planned to register with them on the day of contact.” The social worker attempted to assist Mother in obtaining the contact information for the tribes so Mother could register but was unable to find such information. The social worker informed Mother that if she was “found to have affiliation with the tribes, she could be appointed an attorney from the tribes and placement of the children could change.”

Mother disclosed that she was raised in the foster care system due to her biological parents not being involved in her life. She was placed in legal guardianship at the age of 18 months until she was 11 years old, and then was placed in group homes until she was emancipated from the system. She moved to Arizona in 2009 and remained there until August 29, 2016. She had been diagnosed with bipolar, depression, and ADHD, and had been prescribed multiple psychotropic medications.

Father J.T. reported that he was born in California, moving to Arizona shortly after his birth, returning to California for the second half of high school. He met Mother in 2009 and they moved in together with his family in 2011 until the end of their relationship in 2014. Mother then moved out and became a transient, while he kept the children. In the summer of 2017, Mother took the children back to California with her. He contacted law enforcement but “was informed he had no grounds to claim she kidnap[ped]

the children] since there was no court order from family law.” He reported that he “filed the paperwork but was unable to follow through with it due to the mother’s whereabouts being unknown at that time.” He “eventually was informed by people living in Arizona that the children were [in California].”

The social worker received a telephone call from a family member who reported the last time they had contact with the children was “during the summer of 2017” and that they were informed Mother “ ‘stole’ ” the children from Las Vegas by hopping on a Greyhound bus. The family member also stated the last known location for Mother and children was them residing in Indio, California. The family member expressed a concern that the parents had been unable to keep a stable home for the children.

**\*311** On December 21, 2017, Father J.T. informed the social worker that he had completed and submitted “family law orders” regarding J.T. after Mother “took his son without question.” “He reported because **\*\*418** the mother’s whereabouts were unknown, he was unable to successfully serve her with the documents.” He had received numerous messages on Facebook that the children were in Tucson, Arizona, but denied refiling the paperwork due to Mother then moving to Barstow and her allowing him to see the children. Mother was unaware of whether there were family law orders in place for J.T. She noted receiving documents in the mail a few days before her birthday in 2016 but the documents told her she did not have to appear in court. She believed Father J.T. “did not appear either and child support was established at that hearing.”

Father J.T. also stated that A.M. was not attending school in Las Vegas and he was not aware if the child was attending school in either California or Arizona. He believed A.M. was enrolled in an elementary school in Barstow. The social worker attempted to gather information from the “Corona/Norco” school district to determine how many schools A.M. had attended in California.

DPSS was unable to locate relatives for the children and placed them in foster care. DPSS eventually submitted an ICPC request on behalf of the paternal grandmother.

On January 8, 2018, Mother was arrested for robbery and was in jail.

On January 9, 2018, the juvenile court found “good ICWA notice” and continued the contested jurisdictional hearing for a placement assessment. The court authorized an ICPC with the paternal grandmother in Nevada.

On February 14, 2018, Mother was sentenced to two years in state prison for assault with a deadly weapon causing great bodily injury and evading a police officer.

At the contested jurisdictional/dispositional hearing held February 15, 2018, the juvenile court found the allegations in the first amended petition true and declared the children dependents of the court. Custody was removed from the parents and reunification services were ordered for Mother and Father J.T. Father R.O. was denied services under section 361.5, subdivisions (b)(12) and (e)(1). The court also ordered an ICPC with Father J.T. and found DPSS had conducted a sufficient ICWA inquiry and that ICWA may apply.

On July 10, 2018, Mother reported that she “may have Blackfoot Tribe ancestry” but that she was not registered. The social worker noted that it had **\*312** been over six months since Mother first reported affiliation with the Blackfeet tribe and that she was not registered. However, Mother had not made any attempts to follow up on this information. The social worker therefore recommended the court find ICWA “does not apply to this case.” No ICWA notices were sent to the Blackfeet or Cherokee tribes.

On July 12, 2018, Mother reported that it was she who had initially completed and submitted family law orders for J.T., because Father J.T. had attempted to keep J.T. from her. However, Mother did not follow through with filing the papers. There were no family law orders in place at that time.

After Mother was released from custody on July 27, 2018, she enrolled in a drug treatment program. She also participated in some of her services while incarcerated, and was taking prescription medication for depression and anxiety. She did not have stable housing or employment.

Father J.T. did not participate in any services during the review period. In addition, he was “ ‘hearing voices in his head.’ ” The state of Arizona denied his ICPC due to Father J.T.’s lack of compliance with **\*\*419** the ICPC process. Several attempts were made by Arizona’s ICPC unit to conduct a home study of Father J.T.’s residence, but he did not cooperate. Therefore, the ICPC referral was denied and closed. Father J.T. said that he was homeless and currently staying at a friend’s home in Arizona.

Neither parent had any in-person visitation with the children. However, Mother had weekly monitored telephone contact with the children. Father called the children once in the past six months but did not speak to them.

On August 15, 2018, the juvenile court found ICWA did not apply, continued reunification services for Mother, and terminated services for Father J.T.

By the 12-month review hearing, Mother did not have stable housing or employment. She was temporarily residing with a friend and occasionally cleaning houses for money. She had two active warrants for her arrest. In addition, she left her substance abuse program prior to its completion and did not enroll in another drug treatment program or counseling. Mother, however, completed a parenting course and randomly drug tested negatively. Her visits with the children were inconsistent and Father J.T. did not visit the children at all. During the reporting period, no new information had been provided to suggest that ICWA applied to the children.

On December 14, 2018, the children were placed with the paternal grandmother in Nevada. The children were thriving and doing well in the \*313 paternal grandmother's home. The paternal grandmother was nurturing and loving towards the children and their emotional and physical needs were being met.

On February 8, 2019, the juvenile court found that ICWA did not apply, terminated Mother's reunification services, reduced the parents' visitation to once per month, and set a section 366.26 hearing.

In its section 366.26 hearing report, DPSS noted that during "this reporting period, no new information has been provided to suggest that ICWA applies to the children." The children continued to thrive in their placement with the paternal grandmother. The paternal grandmother was nurturing toward the children, attended to all their needs, and the children appeared to be bonded to her. The paternal grandmother desired to adopt the children. Father J.T. had not visited the children, but called them "sporadically." Since being placed in Nevada, Mother had called to talk to the children "sporadically every three to four weeks."

On September 5, 2019, Mother filed section 388 petitions, seeking return of the children to her care on family maintenance services. Mother alleged that she had completed her case plan, maintained visitation, and shared a strong bond with the children.

On September 6, 2019, DPSS reported that Mother was sentenced to state prison for a term of three years and that her release date was scheduled for March 2021. DPSS also noted that the children were doing well and were stable in their placement with the paternal grandmother who desired to adopt them.

The combined section 388 and section 366.26 hearings were held on September 6, 2019. Mother was present in custody. DPSS submitted on its reports and all counsel stipulated that Mother's stipulated testimony could apply for both hearings. The juvenile court denied Mother's section 388 petitions for failing to state either changed circumstances or best interest of the children. The court also terminated parental rights and found the children adoptable.

\*\*420 On September 30, 2019, Mother filed a timely notice of appeal, challenging the orders made at the September 6, 2019 hearings.

\*314 III




## DISCUSSION

### A. Compliance with ICWA




Mother contends the order terminating parental rights must be reversed because DPSS did not comply with the inquiry and notice requirements of ICWA, resulting in incomplete ICWA notices being sent.<sup>4</sup> We disagree.


#### 1. Standard of Review

[1] [2] [3] [4] "The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. [Citation.]" (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 57, 210 Cal.Rptr.3d 650.) When, as is the case here, the facts are undisputed, we review independently whether the requirements of ICWA have been satisfied. (*In re J.L.* (2017) 10 Cal.App.5th 913, 918, 217 Cal.Rptr.3d 201 (*J.L.*)). However, we review the juvenile court's ICWA findings under the substantial evidence test, which requires us to determine if reasonable, credible evidence of solid value supports the court's order. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467,


135 Cal.Rptr.3d 355;   *In re H.B.* (2008) 161 Cal.App.4th 115, 119-120, 74 Cal.Rptr.3d 27.) We must uphold the court's orders and findings if any substantial evidence, contradicted or uncontradicted, supports them, and we resolve all conflicts in favor of affirmance. ( *In re Alexander C.* (2017) 18 Cal.App.5th 438, 446, 226 Cal.Rptr.3d 515.)


## 2. Relevant Law


“Congress enacted ICWA in 1978 in response to ‘rising concern in the mid-1970’s over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes.’ ” ( *Isaiah W., supra*, 1 Cal.5th at pp. 7-8, 203 Cal.Rptr.3d 633, 373 P.3d 444.) “ICWA reflects a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards a state court must follow before removing an Indian child from his or her family. \*315 [Citations.] For purposes of ICWA, an ‘Indian child’ is an unmarried individual under age 18 who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe. [Citations.]” ( *In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 783, 228 Cal.Rptr.3d 213 ( *Elizabeth M.*).


<sup>[5]</sup>There are two separate ICWA requirements which are sometimes conflated: the obligation to give notice to a tribe, and the obligation to conduct further inquiry to determine whether notice is necessary. Notice to a tribe is required, under federal and state law, when the court knows or has reason to know the child *is* an Indian child. ( *Elizabeth M., supra*, 19 Cal.App.5th at p. 784, 228 Cal.Rptr.3d 213.) In contrast, prior to January 2019, the department was \*\*421 to make further inquiry if it “knows or has reason to know that an Indian child is or *may be* involved” in the case. (Cal. Rules of Court, rule 5.481(a)(4), italics added.)

<sup>[6]</sup>The “ ‘courts and 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.’ ” [Citation.]” (*J.L., supra*, 10 Cal.App.5th at p. 918, 217 Cal.Rptr.3d 201, italics omitted.) “This notice requirement, which is also codified in California law [citation], enables a tribe to determine whether the child is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding.” ( *Isaiah W., supra*, 1 Cal.5th at p. 5, 203 Cal.Rptr.3d 633, 373 P.3d 444.)

Although the notice requirement has always been triggered by a court having “ ‘reason to know’ ” a child may be an Indian child, for many years the term was undefined under federal law. (See  *In re Breanna S.* (2017) 8 Cal.App.5th 636, 650, 214 Cal.Rptr.3d 98.) It was not until 2016 that the Department of the Interior promulgated regulations defining “ ‘reason to know.’ ” (**Indian Child Welfare Act Proceedings**, 81 Fed.Reg. 38778, 38803.)

Under the federal regulations, there is “reason to know” a child is an Indian child if “(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child; [¶] (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child; [¶] (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child; [¶] (4) The court is informed that the domicile or residence of \*316 the child, the child’s parent, or the child’s Indian custodian is on a reservation or in an Alaska Native village; [¶] (5) The court is informed that the child is or has been a ward of a Tribal court; or [¶] (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.” ( 25 C.F.R. § 23.107(c).)

State law, however, defined “reason to know” in 2006. (Senate Bill No. 678, Stats. 2006, ch. 838, §§ 31, 32 (2005-2006 Reg. Sess.); former § 224.3, subd. (b).) From 2006 until 2018, when Assembly Bill No. 3176 (2017-2018 Reg. Sess.) amended the definition, a court or agency had “reason to know” a child may be an Indian child if, for instance, a “person having an interest in the child ... provide[d] 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.” (Former § 224.3, subd. (b)(1), italics added; see  *In re Shane G.* (2008) 166 Cal.App.4th 1532, 1539, 83 Cal.Rptr.3d 513 [“If ... circumstances indicate a child may be an Indian

child, the social worker must further inquire regarding the child's possible Indian status. Further inquiry includes interviewing the parents, ... extended family members or any other person who can reasonably be expected to have information concerning the child's membership status or eligibility. [Citation.]"]; see also [Cal. Rules of Court, rule 5.481\(a\)\(4\)](#) ["If the social worker ... or petitioner knows or has reason to know that an Indian child is or may be involved, that person or entity must make further inquiry as soon as practicable."].) As cases at the time noted, the former provision did not demand much before requiring ICWA **\*\*422** notice. (See [Dwayne P. v. Superior Court \(2002\) 103 Cal.App.4th 247, 258, 126 Cal.Rptr.2d 639](#) [mere "minimal showing required to trigger the statutory notice provisions"].)

But now, as amended by Assembly Bill No. 3176, which became effective on January 1, 2019, the Welfare and Institutions Code's definition of "reason to know" conforms to the definition provided by federal regulations. (§ 224.2, subd. (d); see Assem. Com. on Human Services, Analysis of Assem. Bill No. 3176 (2017-2018 Reg. Sess.) Aug. 28, 2018, p. 8 [the bill " 'simply seeks to change California law to comply with Federal regulations' "].) Under section 224.2, subdivision (d)(1) through (d)(6), the six criteria to determine the definition of "reason to know" are the same as those under the federal regulations. (See § 224.2, subd. (d) & [25 C.F.R. § 23.107\(c\)](#).)

In addition, section 224.2, subdivisions (a) through (c), currently provide as follows: "(a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 may be or has been filed, is or may be an Indian child. The duty to inquire begins with the initial contact, **\*317** including, but not limited to, asking the party reporting child abuse or neglect whether the party has any information that the child may be an Indian child. [¶] (b) If a child is placed into the temporary custody of a county welfare department pursuant to Section 306 or county probation department pursuant to Section 307, the county welfare department or county probation department has a duty to inquire whether that child is an Indian child. Inquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled. [¶] (c) At the first appearance in court of each party, the court shall ask each participant present in the hearing whether the participant knows or has reason to know that the child is an Indian child. The court shall instruct the parties to inform the court if they subsequently

receive information that provides reason to know the child is an Indian child."

Section 224.2, subdivision (e), states, "If the court, social worker, or probation officer has **reason to believe** that an Indian child is involved in a proceeding, the court, social worker, or probation officer shall make further inquiry regarding the possible Indian status of the child ..." The provision goes on to state that further inquiry includes "[i]nterviewing the ... extended family members" to gather additional information as well as "[c]ontacting ... any other person that may reasonably be expected to have information regarding the child's membership status or eligibility." (§ 224.2, subds. (e)(1)-(2), italics added.)

[7] [8]"If the notice duty is triggered under ICWA, the notice to a tribe must include a wide range of information about relatives, including grandparents and great-grandparents, to enable the tribe to properly identify the children's Indian ancestry. [Citation.] Any violation of this policy requires the appellate court to vacate the offending order and remand the matter for further proceedings consistent with ICWA requirements. [Citation.]" ([In re J.D. \(2010\) 189 Cal.App.4th 118, 124, 116 Cal.Rptr.3d 545](#) ([J.D.](#))). Federal regulations require that ICWA notices include, "[i]f known, the names, birthdates, birthplaces, and Tribal enrollment information" of parents and "other direct lineal ancestors of the child, such as grandparents." **\*\*423** ([25 C.F.R. § 23.111\(d\)\(3\)](#).) The Welfare and Institutions Code provisions applying ICWA contain similar requirements. Although those provisions were amended, they at all relevant times required that an ICWA notice contain "[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known." (§ 224.3, subd. (a)(5)(C); see former § 224.2, subd. (a)(5)(C).)

**\*318** [9]ICWA provides that a state may provide "a higher standard of protection to the rights of the parent" than the rights provided under ICWA. ([25 U.S.C. § 1921](#).) A court must apply the higher standard whenever it applies. (*Ibid.*; see [§ 224, subd. \(d\)](#).) A violation of any "higher state standard, above and beyond what the ICWA itself requires," however, "must be held harmless unless the appellant can show a reasonable probability that he or she would have enjoyed a more favorable result in the absence of the error." ([In re S.B. \(2005\) 130 Cal.App.4th 1148, 1162, 30 Cal.Rptr.3d 726](#) ([S.B.](#)); see [Nicole K. v.](#)



*Superior Court* (2007) 146 Cal.App.4th 779, 784, 53 Cal.Rptr.3d 251 [finding error harmless where facts provided “no basis to believe that providing” a parent’s correct birth year “would have produced different results concerning the minor’s Indian heritage”].)

### 3. Whether Former or Current ICWA Statutes Apply

<sup>[10]</sup>In this case, DPSS sent ICWA-030 notices to the BIA in December 2017. At the six-month review hearing on August 15, 2018, and 12-month review hearing on February 8, 2019, the juvenile court found that ICWA did not apply. At the 12-month review hearing, the court terminated Mother’s reunification services and set a section 366.26 hearing. In finding ICWA did not apply, the court stated that proper notice had been given as required by law, a “sufficient inquiry” had been made, and there was “no information to show that ICWA may now apply.” Mother did not challenge the order from the 12-month review hearing by filing a writ petition.

In December 2017, July 2018, and February 2019, the social worker continued to inquire of Mother as to her Indian ancestry. Mother initially reported in her ICWA-020 form that the maternal grandfather had Indian ancestry but did not know the tribe’s name. Later, on December 21, 2017, Mother stated that she was told she had “Blackfoot and Cherokee tribe affiliation but was not registered, however, [she] planned to register with them on the day of contact.” On July 10, 2018, Mother reported that “she may have Blackfoot Tribe ancestry. However, she is not registered.” During the dependency proceedings, Mother had no additional or new information to provide as to her Indian ancestry. In addition, Mother’s biological parents were deceased and DPSS was unable to locate relatives with the exception of Mother’s former foster sibling. On September 6, 2019, at the section 366.26 hearing, the juvenile court implicitly found that ICWA did not apply. Mother subsequently appealed, challenging DPSS’s investigatory and noticing efforts.

DPSS argues that under [Isaiah W.](#), the current ICWA statutes apply because the notice of appeal was filed from the September 6, 2019 order terminating parental rights. Mother responds that the statutes in effect at the time DPSS sent the defective notices to the BIA in December 2017 apply. She also **\*319** asserts that retroactive **\*\*424** application of amended section 224.2 is inappropriate because [Isaiah W.](#) does not support DPSS’s theory and

that “[c]ases are not authority for propositions not considered.” We find DPSS’s arguments more persuasive as retroactivity is not at issue under the circumstances. In this regard, [Isaiah W., supra](#), 1 Cal.5th 1, 203 Cal.Rptr.3d 633, 373 P.3d 444 is instructive.

[In Isaiah W., supra](#), 1 Cal.5th 1, 203 Cal.Rptr.3d 633, 373 P.3d 444, the juvenile court found ICWA did not apply at the jurisdictional/dispositional hearing. The mother did not appeal from that order or otherwise object to the court’s ICWA finding. ([Id.](#) at p. 6, 203 Cal.Rptr.3d 633, 373 P.3d 444.) Nearly one year later, the court terminated the mother’s parental rights and again found ICWA did not apply. The mother appealed the court’s order terminating her parental rights on the ground that the court had reason to know the minor was an Indian child but failed to order the department to comply with the ICWA notice requirements. ([Id.](#) at pp. 6-7, 203 Cal.Rptr.3d 633, 373 P.3d 444.) The Court of Appeal denied relief, finding the mother forfeited her right to appeal from the section 366.26 order due to her failure to appeal from the jurisdictional/dispositional order, which became final 60 days after pronouncement by the court. ([Isaiah W., at p. 7](#), 203 Cal.Rptr.3d 633, 373 P.3d 444.)

Our Supreme Court reversed and remanded for further ICWA proceedings, finding the mother did not forfeit the ICWA issue by failing to appeal from the dispositional order because ICWA and the corresponding provisions of California law impose an affirmative and continuing duty on the juvenile court to inquire whether the child is an Indian child. ([Isaiah W., supra](#), 1 Cal.5th at pp. 6, 9-12, 14-15, 203 Cal.Rptr.3d 633, 373 P.3d 444.) The court concluded: “In light of this continuing duty, the ... order terminating [the mother’s] parental rights was necessarily premised on a *current* finding by the juvenile court that it had no reason to know Isaiah was an Indian child and thus ICWA notice was not required. Here, the juvenile court made that finding explicit in the course of the [section 366.26] hearing when it said, ‘the Court is once again making a finding [that] I have no reason to know the child would fall under the [ICWA].’ Properly understood, [the mother’s] present appeal does not seek to challenge the juvenile court’s finding of ICWA’s inapplicability underlying the ... dispositional order. It instead seeks to challenge the juvenile court’s finding of ICWA’s inapplicability underlying the ... order terminating her parental rights.” ([Id.](#) at p. 10, 203 Cal.Rptr.3d 633, 373 P.3d 444.)

The Supreme Court explained: “The plain language of [former section 224.3, subdivision (a)]—declaring an

‘affirmative and continuing duty’ that applies to ‘all dependency proceedings’ [citation]—means that the juvenile court in this case had a present duty to inquire whether Isaiah was an Indian child at the April 2013 proceeding to terminate [the mother’s] parental rights, even though the court had previously found no reason to know Isaiah was an Indian child at the January 2012 proceeding to place Isaiah in foster care. \*320 Because the validity of the April 2013 order is necessarily premised on the juvenile court’s fulfillment of that duty, there is nothing improper or untimely about [the mother’s] contention in this appeal that the juvenile court erred in discharging that duty.” ( [Isaiah W.](#), *supra*, 1 Cal.5th at p. 11, 203 Cal.Rptr.3d 633, 373 P.3d 444, italics omitted.) The court found that the mother’s “present appeal does not seek to challenge the juvenile court’s finding of ICWA’s inapplicability underlying the January 2012 dispositional order. It instead seeks to challenge the juvenile court’s finding \*\*425 of ICWA’s inapplicability underlying the April 2013 order terminating her parental rights.” ( *Id.* at p. 10, 203 Cal.Rptr.3d 633, 373 P.3d 444.) The court concluded that the “juvenile court’s determination of ICWA’s inapplicability at the January 2012 hearing had no effect on its ongoing inquiry and notice obligations” ( *id.* at p. 12, 203 Cal.Rptr.3d 633, 373 P.3d 444) and that “[t]he court’s April 2013 termination order necessarily subsumed a present determination of ICWA’s inapplicability.” ( *Id.* at p. 15, 203 Cal.Rptr.3d 633, 373 P.3d 444.)

While the facts of [Isaiah W.](#) differ from those in this case in some respects, it is nonetheless instructive. Here, the juvenile court explicitly found that ICWA did not apply at the six-month review hearing held on August 15, 2018. At that hearing, the court continued Mother’s reunification services. The juvenile court also explicitly found that ICWA did not apply at the contested 12-month review hearing on February 8, 2019. By February 2019, current ICWA statutes were in effect. At that hearing, the court also terminated reunification services and set a section 366.26 hearing. Mother did not file a writ petition from the six-month review order, assuming she could, nor did she object at the subsequent 12-month review hearing held in February 2019. She also did not object at the section 366.26 hearing held on September 6, 2019, when the court implicitly found DPSS complied with the ICWA notice and inquiry requirements and that ICWA did not apply. Like [Isaiah W.](#), Mother’s challenge is applicable to the juvenile court’s finding of ICWA inapplicability underlying the September 6, 2019 order terminating her parental rights, not the February 15, 2018 jurisdictional/dispositional order or the August 15, 2018 six-month review order continuing her [services.](#) (*Isaiah*

*W.*, *supra*, 1 Cal.5th at p. 15, 203 Cal.Rptr.3d 633, 373 P.3d 444; *J.L.*, *supra*, 10 Cal.App.5th at p. 917, fn. 4, 217 Cal.Rptr.3d 201.)

Therefore, similar to [Isaiah W.](#), on September 6, 2019, the juvenile court had a duty to determine whether the children were Indian children based on the circumstances existing on September 6, 2019, and not based on the facts or law that existed in December 2017 when the ICWA notices were sent. The determinative factor is not when the ICWA-030 notices were mailed to the relevant tribes, but when the section 366.26 hearing was held. The juvenile court’s 2019 termination order “necessarily subsumed a present determination” of ICWA’s applicability. ( [Isaiah W.](#) *supra*, 1 Cal.5th at p. 15, 203 Cal.Rptr.3d 633, 373 P.3d 444.)

Mother relies on [In re A.W.](#) (2019) 38 Cal.App.5th 655, 251 Cal.Rptr.3d 50, which was decided in 2019 and applied the statute in effect at the time of \*321 the defective notice. The court there rejected an argument that the revised language of section 224.2 requires notice “only when the court knows or has reason to know the child is definitively a member (or knows a parent is definitively a member and the child is eligible for membership)” in an Indian tribe. ( [A.W.](#), at p. 665, 251 Cal.Rptr.3d 50, italics omitted.) The court in [A.W.](#) did not conduct its analysis under the revised statutes. ( *Id.* at p. 662, fn. 3, 251 Cal.Rptr.3d 50.) However, the [A.W.](#) court assumed the California law in effect at the time the juvenile court had conducted the ICWA compliance hearing at issue in 2016 applied and did not conduct an analysis under [Isaiah W.](#) ( [A.W.](#), at p. 662, fn. 3, 251 Cal.Rptr.3d 50.)

The issue before us then is whether the juvenile court and DPSS complied with the inquiry and notice provisions of the current ICWA statutes. We agree with DPSS that the present statute is not being applied \*\*426 retroactively because the juvenile court has a continuing duty to determine whether ICWA applies. Since Mother is appealing from the findings made at the September 6, 2019 section 366.26 hearing and not those in 2017 or 2018, the current ICWA statutes apply.

#### 4. Duty of Inquiry and Duty to Notice Under Current ICWA Statutes

<sup>[11]</sup>Mother argues DPSS failed to comply with the ICWA

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notice requirements because it omitted Mother's grandfather's (the children's great-grandfather) name, C.M., on the ICWA-030 notices. She also faults DPSS in failing to send ICWA notices to the Blackfeet and Cherokee tribes after Mother informed the social worker that "she believed she had Blackfoot and Cherokee heritage."

As previously noted, the agency is required to provide notice if it knows or has "reason to know" the child is an Indian child. (25 U.S.C. § 1912, subd. (a); § 224.2, subd. (f).) Here, the information available to DPSS and the juvenile court did not meet the "reason to know" criteria set forth in the federal regulations and the California statutes related to ICWA. (See 25 U.S.C. § 1912, subd. (c); § 224.2, subd. (d).) No one had informed the court or DPSS that the children were Indian children, the children had not given the court reason to know they were Indian children, there was no suggestion the children had ever lived on a reservation or had been wards of a tribal court, and there was no indication that the children or their parents possessed a tribal identification card. (See 25 C.F.R. § 23.107, subs. (c)(1), (3)-(6); § 224.2, subd. (d)(1), (3)-(6).) At most, Mother had provided information indicating she may have Indian heritage. Although it would follow that the children might also have some Indian heritage, the information Mother provided to DPSS did not rise to the level of "information indicating that the child[ren] [are] [ ] Indian child[ren]." (See 25 C.F.R. § 23.107(c)(2), (3); § 224.2, subd. (d)(2), (3).)

\*322 Mother argues "the list of 'reasons to know' should not be read in a restrictive fashion" and that "[i]n conformity with prior case law, when, as here, the parent lists a grandfather's name as a member of an Indian tribe [citation] and subsequently provides the names of the Blackfoot and Cherokee tribes [citation], that is more than enough to establish a 'reason to know' the child may be eligible for membership in those tribes [citation], triggering the notice requirement." We disagree. Prior case law pre-dates the 2016 enactment of the new federal regulations defining "reason to know" and the 2019 amendments to the California statutes distinguishing between "reason to know" and "reason to believe." (See *In re D.C.* (2015) 243 Cal.App.4th 41, 62, 196 Cal.Rptr.3d 283; *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1387-1388, 194 Cal.Rptr.3d 679 (*Kadence P.*); *In re B.H.* (2015) 241 Cal.App.4th 603, 606-607, 194 Cal.Rptr.3d 226 (*B.H.*); see 81 Fed.Reg. 38804, 38805 (June 14, 2016) [distinguishing between "reason to know" and "reason to believe" and indicating state courts may require additional investigation].)

In any event, even before the regulations and statutory amendments clarifying the meaning of "reason to know," courts had found that vague information or " 'family lore' " indicating a child " 'may' " have Indian ancestry insufficient to require notice. (See *J.L.*, *supra*, 10 Cal.App.5th at pp. 921-923, 217 Cal.Rptr.3d 201; *In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1516, 92 Cal.Rptr.3d 203 [bare suggestion that child might be an Indian child insufficient to trigger notice]; *In re Michael V.* (2016) 3 Cal.App.5th 225, 234, 206 Cal.Rptr.3d 910 [statements indicating \*\*427 Indian heritage made by relative require further inquiry but not notice]; cf. *Kadence P.*, *supra*, 241 Cal.App.4th at pp. 1387-1388, 194 Cal.Rptr.3d 679 [photos and articulated basis of belief made claim of Indian ancestry more than family lore].) Here, the only specific information Mother provided was a statement that she was told and believed that she may have Indian ancestry with the Blackfeet and Cherokee tribes but was not registered. She also listed her grandfather, C.M., as having possible Indian heritage but never provided additional information concerning her Indian ancestry. We are not persuaded that Mother's statements, alone, were sufficient to trigger the ICWA notice provisions.

<sup>[12]</sup>That said, the information Mother provided was sufficient to require further inquiry, as the juvenile court ordered. Likewise, the information gave the juvenile court and DPSS **reason to believe** that an Indian child was involved and, thus, the additional inquiry should have, at minimum, included interviews with Mother's extended family members. (§ 224.2, subd. (b), (e); see *In re N.G.* (2018) 27 Cal.App.5th 474, 482, 238 Cal.Rptr.3d 304 [social worker required to make further inquiry based on minimal parental disclosures, including inquiry to maternal uncle]; \*323 *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1200, 74 Cal.Rptr.3d 863 [finding the duty to inquire requires less certainty regarding the child's Indian status than the duty to notice].)

Nonetheless, in this case DPSS could not have obtained any further information from any other maternal relatives. Both maternal grandparents were deceased. In addition, Mother was raised in foster care due to her biological parents not being involved in her life and had no contact with any relatives. She was placed in legal guardianship at the age of 18 months until she was 11 years old. She then was placed in group homes until she was emancipated. Mother's support system consisted of her significant other and her former foster family. In addition, she did not provide DPSS with information as to any maternal relative for Indian ancestry or placement for the children. No maternal relative appeared at any hearing or participated in

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this matter.

[13] [14] ICWA does not obligate the court or DPSS “to cast about” for investigative leads. ( [In re Levi U.](#) (2000) 78 Cal.App.4th 191, 199, 92 Cal.Rptr.2d 648.) There is no need for further inquiry if no one has offered information that would give the court or DPSS **reason to believe** that a child might be an Indian child. This includes circumstances where parents “fail[ ] to provide any information requiring followup” ( [S.B.](#), *supra*, 130 Cal.App.4th at p. 1161, 30 Cal.Rptr.3d 726; see [B.H.](#), *supra*, 241 Cal.App.4th at p. 608, 194 Cal.Rptr.3d 226; [In re C.Y.](#) (2012) 208 Cal.App.4th 34, 42, 144 Cal.Rptr.3d 516), or if the persons who might have additional information are deceased ( [J.D.](#), *supra*, 189 Cal.App.4th at p. 124, 116 Cal.Rptr.3d 545), or refuse to talk to DPSS. ( [In re K.M.](#) (2009) 172 Cal.App.4th 115, 119, 90 Cal.Rptr.3d 692.)

Here, DPSS’s inquiry was appropriate and complied with section 224.2. Mother has not demonstrated there was a viable lead that would require DPSS “to make a meaningful effort to locate and interview extended family members to obtain whatever information they may have as to the child’s possible Indian status.” ( [In re K.R.](#) (2018) 20 Cal.App.5th 701, 709, 229 Cal.Rptr.3d 451.) Since both of Mother’s biological parents were deceased and Mother had no information concerning any other relatives, DPSS could not contact Mother’s parents or any other relatives to obtain additional ICWA information. In addition, **\*\*428** DPSS requested additional ICWA information from Mother. However, Mother was unable to provide new or additional information concerning ICWA. Mother has not demonstrated error, and reversal is not warranted under the

circumstances of this case.

**B. Compliance with the UCCJEA\*\*****\*324 IV****DISPOSITION**

The judgment is affirmed.

We concur:

**FIELDS, J.**

**RAPHAEL, J.**

**All Citations**

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**Footnotes**

- \* Pursuant to [California Rules of Court, rules 8.1105\(b\)](#) and [8.1110](#), this opinion is certified for publication with the exception of part III.B.
- <sup>1</sup> R.O. (Father R.O.) is the father of A.M. and is not a party to this appeal. J.T., Sr., is the father of J.T. (Father J.T.) and is also not a party to this appeal.
- <sup>2</sup> All future statutory references are to the Welfare and Institutions Code unless otherwise stated.
- <sup>3</sup> Father R.O. was incarcerated in state prison serving a 41-year-to-life sentence for first degree murder. He had been incarcerated since 2009 and had no contact with A.M. except through letters and telephone. The juvenile court later found Father J.T. to be the presumed father for both children.
- <sup>4</sup> The juvenile court’s order terminating Mother’s parental rights did not specifically mention ICWA, but the order was “necessarily premised on a current finding by the juvenile court that it had no reason to know [the children] [were] [

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] Indian child[ren] and thus ICWA notice was not required.” ( [In re Isaiah W. \(2016\) 1 Cal.5th 1, 10, 203 Cal.Rptr.3d 633, 373 P.3d 444](#), italics omitted ( [Isaiah W.](#).)

\*\* See footnote \*, *ante*.

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Court of Appeal, Second District, Division 1,  
California.

IN RE AUSTIN J. et al., Persons Coming Under  
the Juvenile Court Law.  
Los Angeles County Department of Children and  
Family Services, Plaintiff and Respondent,  
v.  
Erica G., Defendant and Appellant.

B299564  
|  
Filed 4/15/2020

### Synopsis

**Background:** Mother appealed from decision of the Superior Court, Los Angeles County, No. 19LJJP00303, Pete R. Navarro, Juvenile Court Referee, finding children to be dependent, removing children from parents, and placing them in custody of Department of Children and Family Services (DCFS), with directions to place them in foster care.

**Holdings:** The Court of Appeal, [Rothschild](#), Presiding Justice, held that:

[1] because there was no pending dependency case in North Carolina when California case began, California court had subject matter jurisdiction when Department of Children and Family Services (DCFS) filed its dependency petition;

[2] mother failed to show that trial court erred in failing to ensure that notice of proceedings was provided to Indian tribe in accordance with **Indian Child Welfare Act** (ICWA);

[3] trial court did not comply with its duties of inquiry and notice under ICWA with respect to father's side of the family;

[4] social worker's declarations and trial court's in-court inquiries provided substantial evidence that DCFS and the court satisfied their initial duties of inquiry regarding father's children; and

[5] mother's statement that she might have Indian ancestry, and the similar statement by mother's aunt, were insufficient to support a **reason to believe** that children

were Indian children, as defined in ICWA.

Affirmed.

**Procedural Posture(s):** On Appeal; Neglect and Dependency Petition.

West Headnotes (29)

[1] [Infants](#) → [Record](#)

Counsel in dependency actions have duty to bring to appellate court's attention post-appellate rulings by juvenile court that affect whether appellate court can or should proceed to merits.

[2] [Infants](#) → [Record](#)

Although post-appellate rulings are outside the record on appeal, appellate court may consider the orders to expedite just and final resolution for benefit of children involved in dependency action.

[3] [Infants](#) → [Inter-jurisdictional issues in general](#)

Because there was no pending dependency case in North Carolina when California case began, California court had subject matter jurisdiction, under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), when Department of Children and Family Services (DCFS) filed its dependency petition; children had lived with mother in California for at least six consecutive months before DCFS filed its petition, North Carolina authorities had returned children to mother, and although North Carolina authorities contemplated initiating new investigation and a new case, they never did so because mother and children had relocated to California. [Cal. Fam.](#)

Code §§ 3402(g), 3421(a)(1).

[4] **Child Custody** → Jurisdiction of Forum Court

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) specifies circumstances in which California courts have jurisdiction to make initial child custody determination. Cal. Fam. Code § 3400 et seq.

[5] **Child Custody** → Jurisdiction of Forum Court

Statute generally prohibiting California court from modifying child custody orders made by court of a different state does not preclude California court from exercising jurisdiction over child merely because a different state court has previously made orders regarding the same child.

[6] **Infants** → Inter-jurisdictional issues in general

Statute that generally prohibited California court from modifying child custody orders made by court of a different state was not applicable in dependency action, since Department of Children and Family Services (DCFS) did not request, and the California juvenile court did not make, any modification of custody order made by North Carolina court. Cal. Fam. Code § 3423.

[7] **Indians** → Actions and proceedings in general

Although trial court and Department of Children and Family Services (DCFS) failed to satisfy their duties of inquiry under ICWA as to father, the relief that ICWA could provide, namely

invalidation of the foster care placement order, was no longer available because court had terminated its foster care placement order and returned children to mother's and father's custody, and thus, the question of whether to reverse the prior order based on noncompliance with ICWA was moot. **Indian Child Welfare Act** of 1978 § 104, 25 U.S.C.A. § 1914.

[8] **Indians** → Actions and proceedings in general

Although question as to whether to reverse trial court's prior order based on court's noncompliance with ICWA was moot, appellate court would nevertheless address merits of the claims because underlying dependency case and ICWA's duty of inquiry were ongoing and there was reasonable probability that issues concerning ICWA compliance would arise again. **Indian Child Welfare Act** of 1978 § 104, 25 U.S.C.A. § 1914.

[9] **Indians** → Dependent Children; Termination of Parental Rights

Central to protections the ICWA provides is the determination that Indian child is involved. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.

[10] **Indians** → Dependent Children; Termination of Parental Rights

Being an "Indian child," for purposes of ICWA, is not necessarily determined by child's race, ancestry, or blood quantum, but, rather, depends on child's political affiliation with federally recognized Indian Tribe. **Indian Child Welfare Act** of 1978 § 4, 8, 25 U.S.C.A. § 1903(4, 8).

et seq.; [Cal. Welf. & Inst. Code § 224.2\(e\)\(3\)](#)

[11] **Indians** → Actions and proceedings in general

ICWA itself does not impose duty on courts or child welfare agencies to inquire as to whether child in dependency proceeding is Indian child, and instead, federal regulations implementing ICWA require that state courts ask each participant in emergency or voluntary or involuntary child-custody proceeding whether participant knows that child is Indian child. **Indian Child Welfare Act** of 1978 § 2, [25 U.S.C.A. § 1901 et seq.](#); [25 C.F.R. § 23.107\(a\)](#).

[14] **Indians** → Notice of pending state proceedings and right to intervene

Under ICWA, duty to provide notice to Indian tribe in dependency case is narrower than the duty of inquiry, in that duty of inquiry applies to every child for whom dependency petition has been filed, but duty of further inquiry applies when there is **reason to believe** that Indian child is involved in dependency proceeding. **Indian Child Welfare Act** of 1978 § 2, [25 U.S.C.A. § 1901 et seq.](#); [Cal. Welf. & Inst. Code § 224.2\(a,e\)](#).

[12] **Indians** → Actions and proceedings in general

Under California law, court and county child welfare department have affirmative and continuing duty to inquire whether child, who is the subject of juvenile dependency petition, is or may be Indian child for purposes of ICWA. **Indian Child Welfare Act** of 1978 § 2, [25 U.S.C.A. § 1901 et seq.](#); [Cal. Welf. & Inst. Code § 224.2\(a\)](#).

[15] **Indians** → Notice of pending state proceedings and right to intervene

In dependency action, trial court's finding that ICWA does not apply implies that notice to Indian tribe is not required because social workers and court do not know or have reason to know that children are Indian children and that social workers have fulfilled their duty of inquiry. **Indian Child Welfare Act** of 1978 § 2, [25 U.S.C.A. § 1901 et seq.](#)

[13] **Indians** → Actions and proceedings in general

When threshold is reached to believe that child is an Indian child, for purposes of ICWA, court, in dependency case, must conduct further inquiry, which includes: (1) interviewing parents and extended family members; (2) contacting Bureau of Indian Affairs (BIA) and State Department of Social Services; and (3) contacting Indian tribes the child may be affiliated with, and anyone else, that might have information regarding child's membership or eligibility in tribe. **Indian Child Welfare Act** of 1978 § 2, [25 U.S.C.A. § 1901](#)

[16] **Indians** → Actions and proceedings in general

Appellate courts review trial court's ICWA findings in dependency case for substantial evidence. **Indian Child Welfare Act** of 1978 § 2, [25 U.S.C.A. § 1901 et seq.](#)



[17] **Infants** → Dependency, Permanency, and Rights Termination

In dependency case, appellate courts must uphold trial court's orders and findings if any substantial evidence, contradicted or uncontradicted, supports them, and appellate courts resolve all conflicts in favor of affirmance.

[18] **Appeal and Error** → Verdict, Findings, and Sufficiency of Evidence

Appellant has burden to show that evidence is not sufficient to support trial court's findings and orders.

[19] **Indians** → Notice of pending state proceedings and right to intervene

In dependency case, mother failed to show that trial court erred in failing to ensure that notice of proceedings was provided to Indian tribe in accordance with ICWA; there was no indication that anyone informed the court that mother's children were members of federally recognized Indian tribe, eligible for such membership, or that either of their biological parents was member of such a tribe, nor did anyone inform court that they had discovered information indicating such facts, and mother's statements that she might have connection to the Cherokee or other tribes, as well as having Creole heritage, but she did not know if she was registered with any tribe, did not constitute information that children were Indian children. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.; Cal. Welf. & Inst. Code § 224.2(d) (1, 3); 25 C.F.R. § 23.107(c).

1 Cases that cite this headnote

[20] **Indians** → Dependent Children; Termination of Parental Rights

Indian ancestry is not among the statutory criteria for determining whether there is reason to know that child is Indian child for purposes of ICWA. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.

1 Cases that cite this headnote

[21] **Indians** → Actions and proceedings in general  
**Indians** → Notice of pending state proceedings and right to intervene

In dependency case, trial court did not comply with its duties of inquiry and notice under ICWA with respect to father's side of the family; record did not reveal that court made any explicit findings or ever asked father questions relevant to determining whether his children were Indian children, nor was father directed to fill out parental notification of Indian status form, as required by state law. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.; Cal. Rules of Court, rule 5.481(a)(2).

[22] **Indians** → Actions and proceedings in general

In dependency action, social worker's declarations and trial court's in-court inquiries provided substantial evidence that Department of Children and Family Services (DCFS) and the court satisfied their initial duties of inquiry regarding father's children and that ICWA did not apply to father's family; father said he did not have any Indian ancestry, and his parental notification of Indian status form stated that he had no knowledge of Indian ancestry. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.

**[23]** **Indians** → Actions and proceedings in general

In dependency action, information about tribal connection that is too vague, attenuated and speculative will not support a **reason to believe** that children might be Indian children so as to require further inquiry under ICWA. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.; Cal. Welf. & Inst. Code § 224.2(d).

**[24]** **Indians** → Actions and proceedings in general

In dependency action, mother's statement that she might have Indian ancestry and had been told that her mother had Cherokee ancestry, and the similar statement by mother's aunt that she might have had Cherokee heritage, were insufficient to support a **reason to believe** that children were Indian children, as defined in ICWA; at most, they suggested mere possibility of Indian ancestry. **Indian Child Welfare Act** of 1978 § 4, 25 U.S.C.A. § 1903(4); Cal. Welf. & Inst. Code § 224.1(a).

**[25]** **Indians** → Dependent Children; Termination of Parental Rights

Being member of Indian tribe, for purposes of ICWA, depends on child's political affiliation with federally recognized Indian tribe, not child's ancestry. **Indian Child Welfare Act** of 1978 § 4, 25 U.S.C.A. § 1903(4); Cal. Welf. & Inst. Code § 224.1(a).

**[26]** **Indians** → Dependent Children; Termination of Parental Rights

Many racially Indian children do not fall within

ICWA's definition of an Indian child, while others may be Indian children, even though they are without Indian blood. **Indian Child Welfare Act** of 1978 § 4, 25 U.S.C.A. § 1903(4); Cal. Welf. & Inst. Code § 224.1(a).

**[27]** **Indians** → Dependent Children; Termination of Parental Rights

Indian ancestry, without more, does not provide **reason to believe** that a child is member of Indian tribe or is the biological child of a member for purposes of ICWA. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.

1 Cases that cite this headnote

**[28]** **Indians** → Dependent Children; Termination of Parental Rights

Even if possibility of Indian ancestry may suggest possibility of Indian tribal membership, that bare suggestion is insufficient, by itself, to establish a **reason to believe** child is Indian child under ICWA. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.

1 Cases that cite this headnote

**[29]** **Indians** → Actions and proceedings in general

In dependency case, fact disclosed through social worker's initial inquiry regarding possibility that children were Indian children, that mother might have Cherokee ancestry, was insufficient, by itself, to provide **reason to believe** that either the children or mother were members of, or eligible for membership in, Indian tribe, and therefore, ICWA imposed no duty to make further inquiry. **Indian Child Welfare Act** of 1978 § 2, 25 U.S.C.A. § 1901 et seq.

**Witkin Library Reference:** 16 Witkin,

Summary of Cal. Law (11th ed. 2017) *Juvenile Court Law*, § 154 [Duty To Inquire into Indian Status; In General.]

**\*301** APPEAL from orders of the Superior Court of Los Angeles County, Pete R. Navarro, Juvenile Court Referee. Affirmed. (Los Angeles County Super. Ct. No. 19LJJP00303)

#### Attorneys and Law Firms

[Neale Gold](#), San Diego, under appointment by the Court of Appeal, for Defendant and Appellant.

[Mary C. Wickham](#), County Counsel, [Kristine P. Miles](#), Assistant County Counsel, and [Stephen D. Watson](#), Deputy County Counsel, for Plaintiff and Respondent.

#### Opinion

[ROTHSCHILD](#), P. J.

**\*302** Erica G. (Mother) appeals from juvenile court jurisdictional and dispositional orders concerning seven of her children. Leslie J. (Leslie) is the presumed father of the four older children (ages 8 to 10 years old); Edward G. (Edward) is the presumed father of the three younger children (ages 2 to 4 years old).<sup>1</sup>

Mother contends: (1) The juvenile court lacked jurisdiction over the subject matter of this action under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) ([Fam. Code, § 3400 et seq.](#)); and (2) If the court had subject matter jurisdiction, the dispositional orders must be reversed because the Los Angeles County Department of Children and Family Services (DCFS) and the juvenile court failed to comply with duties under the [Indian Child Welfare Act](#) of 1978 (ICWA) ([25 U.S.C. § 1901 et seq.](#)) and related California law. We reject these arguments and affirm the juvenile court's orders.

#### FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

In March 2016, Leslie's children were living with him when a San Bernardino County juvenile court declared them dependents of the court and removed them from Leslie. In October 2016, the court returned the children to Mother and dismissed the dependency petition.

In November 2016, Mother allegedly left Leslie's children with Edward's parents in Robeson County, North Carolina. In December 2016, the Robeson County Department of Social Services (DSS) detained Leslie's children from Mother and placed them in foster care.

On May 31, 2017, a North Carolina juvenile court declared Leslie's children to be dependents under North Carolina law, placed them in the custody of the Robeson County DSS for placement in foster care, and approved a plan of reunification with Mother. After Mother and Edward completed classes, the children were returned to Mother.

In May 2018, Bladen County, North Carolina DSS opened a new investigation involving Mother. A social worker from Bladen County requested that the Robeson County DSS complete a home visit at a certain location and, if the family is there, "to initiate the case." (Underlining omitted.) A North Carolina social worker later told a DCFS social worker that they had "lost contact with the family due to relocating to California."

In October 2018, Mother moved to a home in Palmdale, California and enrolled in a domestic violence education group in Lancaster.

In February 2019, DCFS began an investigation concerning the family based on a referral alleging general neglect of one of Mother's children. In early May 2019, social workers determined that the children were "at risk of suffering emotional or physical harm."

On May 7, 2019, DCFS filed a petition alleging dependency jurisdiction under [Welfare and Institutions Code section 300<sup>3</sup> \\*303](#) over the seven children who lived with Mother. Attached to the petition are declarations by a social worker on California Judicial Council form ICWA-010(A) (Jan. 1, 2008), stating as to each child, that an "Indian child inquiry [was] made." On each form, the social worker marked a checkbox next to the statement, "[t]he child has no known Indian ancestry," and left unmarked the checkboxes for the following statements: "The child is or may be a member of or eligible for membership in a tribe"; "[t]he child's parents, grandparents, or great-grandparents are or were members of a tribe"; "[t]he residence or domicile of the child, child's parents, or Indian custodian is in a predominantly Indian community"; "[t]he child or child's family has received

**In re Austin J., 47 Cal.App.5th 870 (2020)**

261 Cal.Rptr.3d 297, 20 Cal. Daily Op. Serv. 3335, 2020 Daily Journal D.A.R. 3472

services or benefits from a tribe or services that are available to Indians from tribes or the federal government”; “[t]he child may have Indian ancestry”; and “[o]ther reason to know the child may be an Indian child.”

At a detention hearing held on May 7, 2019, Mother and Edward were present and Leslie was not. The court detained the seven children from Mother and ordered Leslie’s children placed in DCFS’s custody. The court released Edward’s children to him under DCFS supervision.

At the continued detention hearing held the next day, Edward did not appear, and the court detained his children from him, as well as from Mother. The court asked Mother if she had “any Native American Indian ancestry.” She responded, “I was told that my mother had Cherokee,” and said her “family in Little Rock, Arkansas” would have more information. The court ordered DCFS “to investigate Mother’s possible ICWA connection and to notify the appropriate Cherokee nation and the appropriate federal agencies.”

On the same day, Mother filed a parental notification of Indian status (California Judicial Council form ICWA-020 (Jan. 1, 2008)) stating that the child “may have Indian ancestry”; namely, Cherokee, through her grandmother, who is deceased. The form provided checkboxes to indicate: “I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe”; “[t]he child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe”; and “[o]ne or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized [Indian] tribe.” Mother left the checkboxes blank.

Two days after the detention hearing, a social worker called Mother. Mother told the social worker that “she may have [a] connection to the Cherokee or other tribes as well as having Creole heritage.” She said that “she did not know if she was registered with any tribe.” The possible Cherokee heritage was on her mother’s side of the family through her maternal grandmother and maternal grandfather. Mother told the social worker that her maternal aunt might have additional information.

The social worker spoke with Mother’s maternal aunt by telephone the same day. The maternal aunt reported that her mother (i.e., Mother’s maternal grandmother) “may have had Cherokee heritage,” and she was not aware of other possible tribal heritage. She said that Mother’s maternal grandfather “possibly had heritage but that she did not know what tribe.” She did not know if anyone in the family had attended an Indian school, lived on a


reservation or been treated at an Indian clinic.

In a jurisdiction / disposition report filed on May 29, 2019, DCFS reported that ICWA “does or may apply,” and that the court “was informed that there may be some Cherokee Native American/Indian heritage in [Mother’s] background. \*304 [DCFS] was ordered to investigate said claim.” The report included the social worker’s reports of her conversations with Mother and Mother’s maternal aunt regarding Indian heritage.

At a jurisdiction hearing on May 30, 2019, Leslie appeared in court for the first time. The court asked him if he had “any Native American ancestry.” He said he did not. The court then stated that it “finds that ICWA does not apply to [Leslie].” On the same day, Leslie filed a parental notification of Indian status (California Judicial Council form ICWA-020 (Jan. 1, 2008)), stating: “I have no Indian ancestry as far as I know.” He also left unmarked other checkboxes on the form that would, if marked, indicate that he or his children are members of, or eligible for membership in, an Indian tribe. The court did not make any further inquiries or findings concerning ICWA.

In its minute order issued after the May 30 hearing, the court stated that, as to each of Leslie’s children, the court “does not have a reason to know that this is an Indian child, as defined under ICWA, and does not order notice to any tribe or the [Bureau of Indian Affairs (BIA)]. Parents are to keep [DCFS], their [a]ttorney and the [c]ourt aware of any new information relating to possible ICWA status.” The court did not make a similar finding or order as to Edward’s children.

Edward appeared for a detention hearing on July 2, 2019. It does not appear from our record that the court asked him about Indian tribal membership or eligibility, or that the court ever made any ICWA finding as to him or his children. Nor does our record indicate that Edward filed a parental notification of Indian status.

On July 23, 2019, DCFS filed a first amended petition concerning Leslie’s children. The next day, DCFS filed a second amended petition concerning Edward’s children. California Judicial Council forms ICWA-010(A) are attached to these petitions and signed by a social worker, but are otherwise unmarked. The court sustained the petitions and declared the seven children to be dependents under  [section 300, subdivisions \(a\) and !\[\]\(729993f67f08b74df2e570c12c53c92e\_img.jpg\) \(b\)\(1\)](#). The court then removed the children from the parents and placed them in DCFS’s custody with directions to place them in foster care.

Mother filed a timely notice of appeal.

[1] [2]After appellate briefing was completed, Mother requested judicial notice of juvenile court minute orders concerning the seven children.<sup>4</sup> The minute orders indicate that, at a review hearing held on January 22, 2020, the juvenile court ordered that Leslie's children be placed with Mother and that Edward's children be placed with him and Mother. We granted Mother's unopposed request.

## DISCUSSION

### A. Subject Matter Jurisdiction Under the UCCJEA

[3]Mother contends the juvenile court lacked subject matter jurisdiction over the case under the UCCJEA because North Carolina had continuing exclusive jurisdiction over the children and any issues regarding their custody and care. We disagree.

\*305 [4]The UCCJEA "specifies the circumstances in which California courts have jurisdiction to make an 'initial child custody determination.'" (*In re C.W.* (2019) 33 Cal.App.5th 835, 860, 245 Cal.Rptr.3d 463.) Under the UCCJEA, "a court of this state has jurisdiction to make an initial child custody determination" if, among other grounds, "[t]his state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding." (Fam. Code, § 3421, subd. (a)(1).) A child's "home state" is "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." (Fam. Code, § 3402, subd. (g).)

Here, Mother had been living in California since at least October 2018, and she does not dispute that her children lived with her in California for at least six consecutive months before DCFS filed its petition on May 7, 2019. California is thus the children's home state for purposes of the UCCJEA and California courts have jurisdiction to make an initial child custody determination. (Fam. Code, § 3421, subd. (a)(1).)

Mother argues, however, that "North Carolina seemingly had exclusive continuing jurisdiction under the UCCJEA," and "the record makes evident there were open dependency cases in North Carolina concerning the four oldest boys."

Even if we assume that a prior North Carolina dependency case could preclude the California court from exercising jurisdiction over the children, the record does not support Mother's argument.

In April 2019, during DCFS's investigation regarding the children, Edward informed a social worker about the North Carolina dependency proceedings and reported that "he and the mother completed classes to regain custody." The DCFS social worker contacted a North Carolina social worker who provided the case history for the children. Based upon this contact and history, the DCFS social worker included in her report to the juvenile court that the "children were returned to the mother with counseling services in place for the children." The North Carolina social worker also informed the DCFS social worker that Mother was subsequently "involved in a new investigation" in May 2018 that could have led to the "initiat[ion]" of a case. The North Carolina agency, however, lost contact with Mother after she moved to California. This evidence demonstrates that there was no pending dependency case in North Carolina when the California case began. Rather, North Carolina authorities had returned the children to Mother, contemplated initiating a new investigation and a new case, but ultimately never did so because Mother and children relocated to California.

[5] [6]Mother relies on Family Code section 3423. That section generally prohibits a California court from modifying child custody orders made by a court of a different state. (Fam. Code, § 3423.) It does not, however, preclude a California court from exercising jurisdiction over a child merely because a different state court has previously made orders regarding the same child. DCFS did not request, and the juvenile court did not make, any modification of an order made by the North Carolina court. Section 3423, therefore, is inapposite.

Based on the record before us, we conclude the juvenile court had subject matter jurisdiction under the UCCJEA when DCFS filed its petition.

### B. Indian Child Welfare Act

[7] [8]Mother contends that DCFS and the court did not comply with their duties \*306 of inquiry and notice under ICWA. We conclude that the duties under ICWA were not met with respect to Edward's side of the family, but were met with respect to Mother's and Leslie's side of the family.<sup>5</sup>

### 1. Background

ICWA reflects a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards that a state court, except in emergencies, must follow before removing an Indian child from his or her family. (25 U.S.C. § 1902; see *In re Isaiah W.* (2016) 1 Cal.5th 1, 7–8, 203 Cal.Rptr.3d 633, 373 P.3d 444; *In re W.B.* (2012) 55 Cal.4th 30, 47, 144 Cal.Rptr.3d 843, 281 P.3d 906; *In re S.B.* (2005) 130 Cal.App.4th 1148, 1163, 30 Cal.Rptr.3d 726 [ICWA does not apply to emergency removal and placement of children].) When ICWA applies, a state court may not, for example, make a foster care placement of an Indian child or terminate parental rights to an Indian child unless the court is satisfied “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 proved unsuccessful.” (25 U.S.C. § 1912(d); § 361.7, subd. (a); see *In re K.B.* (2009) 173 Cal.App.4th 1275, 1288, 93 Cal.Rptr.3d 751 [“Active efforts required by ICWA are ‘timely and affirmative steps ... to remedy problems which might lead to severance of the parent-child relationship.’ ”].) Prior to placing an Indian child in foster care, the court must also make “a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” (25 U.S.C. § 1912(e); § 361.7, subd. (c).)

If an Indian child is removed from a foster care home, a subsequent placement must be in accordance with ICWA, unless the child is returned to the parent. (25 U.S.C. § 1916(b); § 224, subd. (b).) The Indian child, the parent, and the Indian child’s tribe have the right to intervene in any “proceeding for the foster care placement of, or termination of parental rights to, an Indian child” (25 U.S.C. § 1911(c)), and can petition the court to invalidate any foster care placement of an Indian child made in violation of ICWA (25 U.S.C. § 1914; § 224, subd. (e)).

<sup>[9]</sup> <sup>[10]</sup>Central to the protections ICWA provides is the determination that an Indian child is involved. For purposes of ICWA, an “Indian child” is an unmarried individual under 18 years of age who is either (1) a member of a federally recognized Indian tribe, or (2) is eligible for

\*307 membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe. (25 U.S.C. § 1903(4) & (8); see § 224.1, subd. (a) [adopting federal definitions]; *In re Michael V.* (2016) 3 Cal.App.5th 225, 231–232, 206 Cal.Rptr.3d 910.) Being an “Indian child” is thus not necessarily determined by the child’s race, ancestry, or “blood quantum,” but depends rather “on the child’s political affiliation with a federally recognized Indian Tribe.” (81 Fed.Reg. 38801–38802; see also *In re B.R.* (2009) 176 Cal.App.4th 773, 783, 97 Cal.Rptr.3d 890 [“ICWA focuses on ‘membership’ rather than racial origins”].)

<sup>[11]</sup>ICWA itself does not impose a duty on courts or child welfare agencies to inquire as to whether a child in a dependency proceeding is an Indian child. (*In re H.B.* (2008) 161 Cal.App.4th 115, 120, 74 Cal.Rptr.3d 27.) Federal regulations implementing ICWA, however, require that state courts “ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child.” (25 C.F.R. § 23.107(a).) The court must also “instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.” (*Ibid.*)

<sup>[12]</sup>ICWA provides that states may provide “a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under” ICWA. (25 U.S.C. § 1921.) Under California law, the court and county child welfare department “have an affirmative and continuing duty to inquire whether a child,” who is the subject of a juvenile dependency petition, “is or may be an Indian child.” (§ 224.2, subd. (a); see *In re Isaiah W., supra*, 1 Cal.5th at p. 9, 203 Cal.Rptr.3d 633, 373 P.3d 444; Cal. Rules of Court, rule 5.481(a).) The child welfare department’s initial duty of inquiry includes “asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled.” (§ 224.2, subd. (b).) The juvenile court must ask the participants in a dependency proceeding upon each party’s first appearance “whether the participant knows or has reason to know that the child is an Indian child” (§ 224.2, subd. (c)), and “[o]rder the parent ... to complete Parental Notification of Indian Status ( [California Judicial Council] form ICWA-020).” (Cal. Rules of Court, rule 5.481(a)(2)(C), italics omitted.)

<sup>[13]</sup>California law also requires “further inquiry regarding

the possible Indian status of the child” when “the court, social worker, or probation officer has **reason to believe** that an Indian child is involved in a proceeding.” (§ 224.2, subd. (e).) The Legislature, which added the “**reason to believe**” threshold for making a further inquiry in 2018, did not define the phrase. When that threshold is reached, the requisite “further inquiry” “includes: (1) interviewing the parents and extended family members; (2) contacting the BIA and State Department of Social Services; and (3) contacting tribes the child may be affiliated with, and anyone else, that might have information regarding the child’s membership or eligibility in a tribe.” (*In re D.S.* (Mar. 18, 2020, D076517) 46 Cal.App.5th 1041, —, 259 Cal.Rptr.3d 903, [2020 WL 1430104 at \*3] (D.S.) (fns. omitted), citing § 224.2, subd. (e)(3).)

In addition to the inquiry that is required in every dependency case from the outset and the “further inquiry” required under California law when there is a “**reason to believe**” an Indian child is involved, a third step—notice to Indian tribes—is required under ICWA and California law if and when “the court knows or has reason to know that an Indian child is involved.” (25 U.S.C. § 1912(a); see also § 224.3, subd. (a) [if “the court, a social worker, or probation officer knows or has reason to know ... that an Indian child is involved” in the dependency proceeding, “notice shall be sent to the [child’s] parents or legal guardian, Indian custodian, if any, and the child’s tribe”]; Cal. Rules of Court, rule 5.481(b)(1).)

<sup>[14]</sup>The duty to provide notice is narrower than the duty of inquiry. Although the duty of inquiry applies to every “child for whom a petition under Section 300, 601, or 602 may be or has been filed” (§ 224.2, subd. (a)), and the duty of further inquiry applies when there is a “**reason to believe** that an Indian child is involved in a proceeding” (§ 224.2, subd. (e)), the duty to provide notice to Indian tribes applies only when one knows or has a “reason to know ... an Indian child is involved,” and only “for hearings that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement.” (§ 224.3, subd. (a).)

In 2018, the Legislature enacted changes to the state’s ICWA–related statutes for the purpose of conforming state law to recent changes in federal ICWA regulations. (See Stats. 2018, ch. 833, pp. 5342–5402; *In re A.M.* (Mar. 5, 2020, E073805) 47 Cal.App.5th 303, 260 Cal.Rptr.3d 412 Assem. Com. on Appropriations, com. on Assem. Bill No. 3176 (2017–2018 Reg. Sess.) May 23, 2018, p. 1; Sen. Com. on Judiciary, Rep. on Assem. Bill No. 3176 (2017–2018 Reg. Sess.) June 18, 2018, pp. 1–2.) The changes included a redefinition of the “reason to know”

requirement that triggers the duty to give notice of the proceedings to Indian tribes. Section 224.2, subdivision (d) now provides: “There is reason to know a child involved in a proceeding is an Indian child under any of the following circumstances: [¶] (1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child’s extended family informs the court that the child is an Indian child. [¶] (2) The residence or domicile of the child, the child’s parents, or Indian custodian is on a reservation or in an Alaska Native village. [¶] (3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child. [¶] (4) The child who is the subject of the proceeding gives the court reason to know that the child is an Indian child. [¶] (5) The court is informed that the child is or has been a ward of a tribal court. [¶] (6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.” (See also Cal. Rules of Court, rule 5.481(b).)

This definition, which is substantially identical to the definition adopted in 2016 by the BIA (25 C.F.R. § 23.107(c); 81 Fed.Reg. 38778), replaced a definition under which the court would have a “reason to know” that a “child is an Indian child” based merely upon “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.” (Former § 224.3, subd. (b)(1); see Stats. 2018, ch. 833, §§ 5–6, pp. 5348–5350 [repealing section 224.3 and enacting section 224.2]; see, e.g., \*309 *In re Antoinette S.*, *supra*, 104 Cal.App.4th at pp. 1407–1408, 129 Cal.Rptr.2d 15 [“suggestion of Indian ancestry” sufficient to trigger ICWA notice requirements].) Cases relying on such language are no longer controlling or persuasive on this point. (See *A.M.*, *supra*, 47 Cal.App.5th at —, 260 Cal.Rptr.3d 412, [2020 WL 1631230 at \*10] [rejecting parent’s reliance on case law predating the recent regulatory and statutory changes defining “reason to know”].)

In defining the “reason to know” standard as a reason to know that a child “is an Indian child,” the BIA expressly denied requests for more inclusive language, such as, “is or could be an Indian child” or “may be an Indian child.” (81 Fed.Reg. 38804, italics added.) In rejecting the broader phrases, the BIA pointed to concerns that such language would cause “undue delay, especially when a parent has only a vague notion of a distant [tribal] ancestor.” (*Ibid.*; see also Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2020) Disposition Hearing, § 2.125[1], p. 2–

419 [ICWA “does not apply to the many children involved in juvenile dependency proceedings who merely have some vague, distant, or possible Indian heritage”].) Indeed, tribal ancestry is not among the criteria for having a reason to know the child is an Indian child. (§ 224.2, subd. (d); 25 C.F.R. § 23.107(c).)

## 2. Standards of Review

[15] [16] [17] [18] As to each of the children, the court found that ICWA does not apply. The finding implies that notice to a tribe was not required because social workers and the court did not know or have a reason to know the children were Indian children and that social workers had fulfilled their duty of inquiry. We review a court’s ICWA findings for substantial evidence. (*In re D.S.*, *supra*, 46 Cal.App.5th at —, 259 Cal.Rptr.3d 903, [2020 WL 1430104 at \*4]; *In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467, 135 Cal.Rptr.3d 355.) “We must uphold the court’s orders and findings if any substantial evidence, contradicted or uncontradicted, supports them, and we resolve all conflicts in favor of affirmance.” (*A.M.*, *supra*, 47 Cal.App.5th at —, 260 Cal.Rptr.3d 412, [2020 WL 1631230 at \*5].) Mother, as the appellant, “has the burden to show that the evidence was not sufficient to support the findings and orders.” (*In re Alexander C.* (2017) 18 Cal.App.5th 438, 446, 226 Cal.Rptr.3d 515.)

## 3. Duty to Give Notice to Indian Tribes

[19] Mother contends that DCFS was required to provide notice to Cherokee tribes because social workers and the court had “reason to know an Indian child [was] involved.” She does not address the revised criteria for evaluating whether the court had a reason to know a child is an Indian child (§ 224.2, subd. (d)); she simply asserts in a conclusory manner that “notice to the Cherokee tribes [w]as required by ... ICWA.” Our review of the record does not support her argument.

We can summarily reject four of the six statutory reason-to-know criteria. There is no evidence that any of the children or their parents resided “on a reservation or in an Alaska Native village”; none of the children said anything

about having Indian ancestry; there is no evidence that any of the children were or had been “a ward of a tribal court”; and no one informed the court that either a parent or any of the children “possess an identification card indicating membership or citizenship in an Indian tribe.” (§ 224.2, subd. (d)(2), (4), (5) & (6).)

Two of the criteria merit more discussion. Subdivisions (d)(1) and (d)(3) of section 224.2 provide that the requisite “reason to know” exists when “[a] person \*310 having an interest in the child ... or a member of the child’s extended family informs the court that the child is an Indian child,” or when “[a]ny participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child.”

As noted above, an “Indian child” is an unmarried individual under age 18 years, who is either (1) a member of a federally recognized Indian tribe, or (2) is eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe. (25 U.S.C. § 1903(4) & (8); see § 224.1, subd. (a) [adopting federal definitions].) There is no evidence that anyone informed the court that any of Mother’s children is a member of a federally recognized Indian tribe, eligible for such membership, or that either of their biological parents is a member of such a tribe. Nor did anyone inform the court they had discovered information indicating such facts.

[20] Mother informed the court that she had been “told that [her] mother had Cherokee [ancestry]” and, in her parental notifications of Indian status form, stated that her children “may have [Cherokee] Indian ancestry” through her grandmother. She later told a social worker that “she may have [a] connection to the Cherokee or other tribes as well as having Creole heritage,” but “she did not know if she was registered with any tribe.” Mother’s maternal aunt provided similar statements: Mother’s maternal grandmother “may have had Cherokee heritage,” and Mother’s maternal grandfather “possibly had heritage but that she did not know what tribe.” Both the grandmother and grandfather are deceased. At most, these statements merely suggest the possibility that the children may have Cherokee ancestry; Indian ancestry, however, is not among the statutory criteria for determining whether there is a reason to know a child is an Indian child. The statements, therefore, do not constitute information that a child “is an Indian child” or information indicating that the child is an Indian child, as is now required under both California and federal law. (§ 224.2, subd. (d)(1) & (3); 25 C.F.R. § 23.107(c).) Mother has therefore failed to show that the court erred in failing to ensure that notice of the



proceedings was provided in accordance with ICWA. (See [A.M.](#), *supra*, 47 Cal.App.5th at —, 260 Cal.Rptr.3d 412, [2020 WL 1631230 at \*10] [information from mother that she may have Indian heritage “did not rise to the level of ‘information indicating that the child[ren] [are] ... Indian child[ren]’ ”].)

#### 4. Duty of Initial Inquiry with Respect to Edward’s Children

<sup>[21]</sup>The record in this case does not reveal that the court made any explicit findings that it or DCFS satisfied their duties of inquiry under ICWA or state law with respect to Edward’s children. To the extent the court’s rulings imply such a finding, there is no substantial evidence to support it. Indeed, it does not appear from our record that the court or any social worker ever asked Edward any questions relevant to determining whether his children were Indian children. Nor was Edward directed to fill out a parental notification of Indian status form as required ([Cal. Rules of Court, rule 5.481\(a\)\(2\)](#)), and no such form is in our record.

#### 5. Duties of Initial and Further Inquiry with Respect to Leslie’s Children

<sup>[22]</sup>As to each of Leslie’s children, the court expressly found that ICWA does not apply. The finding implies that the duty of inquiry under California’s ICWA-related **\*311** law had been satisfied. There is sufficient evidence to support the court’s finding.

Attached to the initial [section 300](#) petition are form declarations by a social worker that, as to each child, an “Indian child inquiry” was “made,” that “[t]he child has no known Indian ancestry,” and—as the blank checkboxes on the forms imply—the inquiry revealed no other indicia that the children are Indian children. The court asked Mother and Leslie in open court during their first appearance whether they had any Indian ancestry. Mother said that she had been “told that [her] mother had Cherokee [ancestry]” and Leslie said he did not have any Indian ancestry. Mother filled out a parental notification of Indian status form for each child stating that she “may have Indian ancestry” through a deceased maternal grandmother. Leslie filed a similar form stating he has no knowledge of Indian

ancestry. The social worker’s declarations and the court’s in-court inquiries provide substantial evidence that DCFS and the court satisfied their initial duties of inquiry regarding Leslie’s children.

Based upon Leslie’s in-court statement and his parental notification of Indian status declaration indicating that he and his children have no Indian ancestry and are neither members nor eligible for membership in an Indian tribe, there was no “**reason to believe**” that any of his children are Indian children based on his parentage. (§ 224.2, subd. (e).) Therefore, there was no duty to make a “further inquiry” as to his side of the family.

<sup>[23]</sup>Whether statements by Mother and her maternal aunt established a **reason to believe** that her children are Indian children is a closer question. Although, as explained above, the evidence provided no reason to *know* that any of the children are Indian children under the criteria in section 224.2, subdivision (d), a *belief* that a child is an Indian child presumably requires a lesser degree of certitude or factual support than *knowing* a child is an Indian child. But the duty of further inquiry still requires a legally sufficient reason for that belief. The statutorily-defined reason to know a child is an Indian child is based on a logical and reasonable relationship between a fact—such as the child’s living on a reservation or having been a ward of a tribal court—and the resulting knowledge that the child is an Indian child. (§ 224.2, subd. (d).) So too must a logical and reasonable relationship connect facts with a resulting belief that a child is an Indian child for the purpose of the statute. Information about a tribal connection that “is too vague, attenuated and speculative” will not support a “**reason to believe** the children might be Indian children.” ([In re J.D.](#) (2010) 189 Cal.App.4th 118, 125, 116 Cal.Rptr.3d 545.)

<sup>[24]</sup> <sup>[25]</sup> <sup>[26]</sup> <sup>[27]</sup> Mother’s statement that she “may have Indian ancestry” and had been “told that [her] mother had Cherokee [ancestry],” and the similar statement by Mother’s aunt that she “may have had Cherokee heritage,” are insufficient to support a **reason to believe** the children are Indian children as defined in ICWA. At most, they suggest a mere possibility of Indian ancestry. Indian ancestry, heritage, or blood quantum, however, is not the test; being an Indian child requires that the child be either a member of a tribe or a biological child of a member. ([25 U.S.C. § 1903\(4\)](#); § 224.1, subd. (a); [In re Jeremiah G.](#) (2009) 172 Cal.App.4th 1514, 1520, 92 Cal.Rptr.3d 203 [“if the child is not a tribe member, and the mother and the biological father are not tribe members, the child simply is not an Indian child”].) Being a member of a tribe depends “on the child’s political affiliation with a federally recognized Indian Tribe,” not the child’s ancestry. (81

Fed.Reg. 38801; see also [\\*312 Brackeen v. Bernhardt](#) (5th Cir. 2019) 937 F.3d 406, 428 [“ICWA’s definition of Indian child is a political classification”], reh’g. en banc granted (5th Cir. 2019) 942 F.3d 287, 289.) Consequently, “many racially Indian children” do not fall within ICWA’s definition of an Indian child, while others may be Indian children even though they are “without Indian blood.” ([Brackeen v. Bernhardt, supra](#), 937 F.3d at p. 428.) Indian ancestry, without more, does not provide a **reason to believe** that a child is a member of a tribe or is the biological child of a member. Here, there is nothing more; indeed, Mother conspicuously did not check the boxes on her parental notification of Indian status forms that would have indicated that she or any of the children is or may be a member of, or eligible for membership in, an Indian tribe.

<sup>[28]</sup>Even if we assume that the possibility of Indian ancestry may suggest the possibility of Indian tribal membership, that bare suggestion is insufficient by itself to establish a **reason to believe** a child is an Indian child. In the recent changes to California’s ICWA-related law, the Legislature removed the language, “information suggesting the child is a member of a tribe or eligible for membership in a tribe,” from the list of circumstances that provided one with a “reason to know” a child is an Indian child. Significantly, it did not add that language to a definition of the newly created “**reason to believe**” standard for further inquiry. We will not infer its incorporation into that standard.

<sup>[29]</sup>In short, the fact disclosed through the social worker’s initial inquiry regarding the possibility that the children are Indian children—that Mother may have Cherokee ancestry—is insufficient by itself to provide a **reason to believe** that either the children or their parents are members of, or eligible for membership in, an Indian tribe. Therefore, the statute imposed no duty to make further inquiry.

The recent decision [in A.M., supra](#), 47 Cal.App.5th —, 260 Cal.Rptr.3d 412, [2020 WL 1631230] is distinguishable. In that case, the mother indicated on her parental notification of Indian status form that “she was or may be a member of, or eligible for membership in a federally recognized Indian tribe,” and that “one or more of her parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.” ([Id. at \\*2](#), —, 260 Cal.Rptr.3d 412.) She later told a social worker that she had tribal “affiliation” with the Blackfoot and Crow tribes and “planned to register” with the tribes. ([Id. at \\*3](#), —, 260 Cal.Rptr.3d 412.) The Court of Appeal held that “the information [the mother] provided was sufficient to require further inquiry.” ([Id. at \\*11](#), —

—, 260 Cal.Rptr.3d 412.) Significantly, the mother in [A.M.](#) did not merely say that she had Indian ancestry, but that she was or may be a *member* of a tribe or eligible for such membership, and that she had at least one ancestor who was or is a *member* of a tribe. The fact that she planned to “register” with certain tribes also implies that she was eligible for membership. In the present case, by contrast, there is no indication that Mother or any of her ancestors was a member of, or eligible for membership, in an Indian tribe.<sup>6</sup>

We also reject Mother’s reliance on [In re N.G. \(2018\) 27 Cal.App.5th 474, 238 Cal.Rptr.3d 304 \(N.G.\)](#). In that case, the dependent child’s father told social workers that, in addition to information suggesting an ancestral tribal connection, [\\*313](#) there were “paternal cousins” who were “registered members of ‘the Cherokee tribe.’” ([Id. at p. 478, 238 Cal.Rptr.3d 304](#).) The Court of Appeal held that such information “plainly suggested [the child] may be eligible for membership in a federally recognized Cherokee tribe, and required the social worker to ‘make further inquiry.’” ([Id. at p. 482, 238 Cal.Rptr.3d 304](#).) The information that relatives of the dependent child were *members* of a tribe, and not merely tribal ancestors, distinguishes [N.G.](#) from the instant case for the same reason [A.M.](#) is distinguishable. Moreover, the court in [N.G.](#) based its holding on the prior definition of a reason to know, which included “information to suggest [the child is] ... eligible for membership in a ... tribe.” ([Ibid.](#), citing former § 224.3, subd. (b)(1).) As discussed above, the Legislature has removed that definition from the statutory scheme.

## DISPOSITION

The juvenile court’s jurisdiction and disposition orders are affirmed.

We concur:

CHANEY, J.

WEINGART, J.\*

All Citations

**In re Austin J., 47 Cal.App.5th 870 (2020)**

261 Cal.Rptr.3d 297, 20 Cal. Daily Op. Serv. 3335, 2020 Daily Journal D.A.R. 3472

47 Cal.App.5th 870, 261 Cal.Rptr.3d 297, 20 Cal. Daily Op. Serv. 3335, 2020 Daily Journal D.A.R. 3472

**Footnotes**

- \* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).
- <sup>1</sup> For ease of reference, we will refer to the four older children as Leslie’s children and the three younger children as Edward’s children. We intend no disrespect to Mother, who is the mother of all seven children. Mother also has at least two other children, who are living with other relatives and not subjects of the underlying dependency proceedings.
- <sup>2</sup> Mother raises no challenges regarding the merits of the juvenile court’s orders. We recite only those facts necessary for a full discussion of the issues before us.
- <sup>3</sup> Unless otherwise indicated, further statutory references are to the Welfare and Institutions Code.
- <sup>4</sup> “[D]ependency counsel have a duty to bring to the appellate court’s attention postappellate rulings by the juvenile court that affect whether the appellate court can or should proceed to the merits.” ( [In re N.S. \(2016\) 245 Cal.App.4th 53, 57, 199 Cal.Rptr.3d 431.](#)) Although the rulings are outside the record on appeal, we may consider the orders “ ‘to expedite just and final resolution for the benefit of the children involved.’ ” ( [In re Antoinette S. \(2002\) 104 Cal.App.4th 1401, 1412, 129 Cal.Rptr.2d 15.](#))
- <sup>5</sup> Although the court and DCFS failed to satisfy their duties of inquiry as to Edward, the relief that ICWA could provide in this case—invalidation of the foster care placement order ( [25 U.S.C. § 1914; § 224, subd. \(b\)](#))—is no longer available because the court has terminated its foster care placement order and returned the children to Mother’s and Edward’s custody. The question whether to reverse the prior order based on noncompliance with ICWA is therefore moot. (Cf. [In re Dani R. \(2001\) 89 Cal.App.4th 402, 406, 106 Cal.Rptr.2d 926](#) [appeal from order denying mother reunification services rendered moot by post–appeal order granting her such services].) We nevertheless address the merits of the claims because the underlying dependency case and ICWA’s duty of inquiry are ongoing and there is a reasonable probability that issues concerning ICWA compliance will arise again. (See [Center for Local Government Accountability v. City of San Diego \(2016\) 247 Cal.App.4th 1146, 1157, 202 Cal.Rptr.3d 629](#) [court may address merits of an issue that is otherwise moot if “there is a reasonable expectation the allegedly wrongful conduct will be repeated”].)
- <sup>6</sup> Because [A.M.](#) is distinguishable, we express no view as to whether it was correctly decided on its facts.

Filed 9/30/20; Certified for publication 10/6/20 (order attached)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Dominic F. et al., Persons  
Coming Under the Juvenile Court  
Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.B.,

Defendant and Appellant.

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B302482

(Los Angeles County  
Super. Ct. No. 19LJJP00406A–C)

APPEAL from findings and orders of the Superior Court of  
Los Angeles County, Steven E. Ipson, Referee. Affirmed.

Cristina Gabrielidis, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Acting  
Assistant County Counsel, and David Michael Miller, Deputy  
County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

M.B. (Mother) challenges the juvenile court's jurisdictional findings and dispositional orders made October 16, 2019. On appeal, she does not contest the merits of the court's adjudication; instead, her sole contention is that reversal is warranted because the juvenile court and Department of Children and Family Services (DCFS) failed to satisfy the formal notice requirements under the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.) and related California law (Welf. & Inst. Code,<sup>1</sup> § 224 et seq.).

We find the juvenile court did not err in finding that ICWA does not apply, and accordingly, we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Because the failure to comply with the formal notice requirements of ICWA is the sole basis for Mother's appeal, we recite only those facts pertinent to her claim.

On June 17, 2019, DCFS filed a petition on behalf of minors D.F., G.F., and B.F., pursuant to section 300, subdivisions (a) and (b)(1).

At the detention hearings on June 18 and 19, 2019, the juvenile court ordered the minors removed from both parents' care and placed with DCFS. The juvenile court reviewed the Parental Notification of Indian Status (Judicial Council form ICWA-020) filed by each parent. The juvenile court stated Father indicated he has "no Indian ancestry" in his ICWA-020 form. Mother had marked the checkbox indicating she "may have Indian ancestry" and handwrote "unknown tribe name from New

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Mexico” on her ICWA-020 form.<sup>2</sup> The juvenile court instructed DCFS: “To the extent the Department can begin an investigation for that understanding, I ask that you look into it. But all it says is ‘unknown tribe.’”

In the jurisdiction/disposition report filed July 8, 2019, DCFS apprised the court of its “ICWA updates.” The social worker (SW) had contacted maternal grandfather. He reported “his family believed they were of [N]ative American descent, but that it was never proven.” He said his “family was out of New York” so “it could be from that area.”

The SW next contacted maternal grandmother (MGM), who said her mother did not have Native American heritage and was of Irish and Welsh descent. However, MGM said her paternal grandmother—i.e., the minors’ maternal great-great grandmother (MGG-GM)—was “part [N]ative American.” MGM recalled MGG-GM was born in New Mexico.

The SW contacted Mother. Mother said her great grandmother (again, the same MGG-GM) was adopted, and asserted she was “full native” although “nothing had been

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<sup>2</sup> The form includes four other checkboxes that provide:

a) “I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.”

b) “The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.”

c) “I have no Indian ancestry as far as I know.”

d) “One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.”

Mother left these checkboxes blank.

checked before she passed [away].” Mother mentioned her sister—i.e., maternal aunt (MA)—has children who “receiv[ed] benefits” but was unsure if it was through MA’s husband—who is not biologically related to the children subject to this appeal. Mother stated her male cousin also believed he had Cherokee heritage from his own father, but that he similarly was “unrelated” to Mother’s side of the family.

The SW looked up a list of federally-recognized tribes in the areas Mother and her relatives had mentioned—New Mexico and New York—and sent ICWA notices<sup>3</sup> via certified mail to 21 tribes in New Mexico, nine tribes in New York, and the Bureau of Indian Affairs.

On August 6, 2019, DCFS informed the court it received ICWA response letters from 11 tribes, indicating the children were not enrolled members and are not eligible for enrollment as members of their respective tribes; copies of the response letters DCFS received were provided to the court.

On August 16, 2019, DCFS informed the court it received ICWA response letters from four more tribes, and provided copies thereof, all indicating the children were neither members nor eligible for membership in their respective tribes.

And on October 11, 2019, DCFS provided the court with the response letters it received from nine more tribes, again all indicating the children were neither members nor eligible for membership.

At the October 16, 2019 jurisdictional and disposition hearing, DCFS informed the court it had been “over 60 days”

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<sup>3</sup> The record on appeal and in the trial court does not contain the actual ICWA notices sent by DCFS.

since it received responses from the tribes indicating the children are neither tribal members nor eligible for membership. DCFS requested the court find ICWA did not apply to the three children. The juvenile court agreed and found ICWA did not apply. The court then sustained two allegations in the petition pursuant to section 300, subdivision (b) and dismissed the remaining allegations.

The minors were declared dependent children of the court under section 300, subdivision (b); were ordered removed from the home, custody, and care of Mother and Father; and were placed with DCFS. Mother and Father were allowed monitored visitation, and DCFS was given discretion to liberalize.

Mother timely filed a notice of appeal.

### **DISCUSSION**

The sole issue raised by Mother on appeal is whether the juvenile court complied with ICWA's formal notice requirements, which become applicable once a court has determined there is "reason to know" the subject minors are Indian children. Mother argues although DCFS "impressively investigated" Mother's claim of possible Native American ancestry, its "fail[ure] to file the actual notices it sent to the tribes with the juvenile court" precluded the court from determining whether proper notice under ICWA was given. She contends the court thus erred by concluding ICWA did not apply as it had "not review[ed] the content of the notices" and "had insufficient information to reach that conclusion."

DCFS disagrees and argues the vague statements about possible Indian heritage from Mother and maternal grandparents did not rise to the level of information indicating that the



children are Indian children, and thus, did not trigger the formal notice provisions of ICWA.

We agree with DCFS. Based on the record, recent changes to the law and case precedent, we find no error by the juvenile court and we conclude substantial evidence supports its finding that ICWA does not apply.

A. *Standard of Review*

“[W]here the facts are undisputed, we independently determine whether ICWA’s requirements have been satisfied.” (*In re D.S.* (2020) 46 Cal.App.5th 1041, 1051 (*D.S.*); accord, *In re A.M.* (2020) 47 Cal.App.5th 303, 314 (*A.M.*.) However, “we review the juvenile court’s ICWA findings under the substantial evidence test, which requires us to determine if reasonable, credible evidence of solid value supports the court’s order. [Citations.] We must uphold the court’s orders and findings if any substantial evidence, contradicted or uncontradicted, supports them, and we resolve all conflicts in favor of affirmance.” (*A.M.*, at p. 314; accord, *In re Austin J.* (2020) 47 Cal.App.5th 870, 885 (*Austin J.*.) The appellant—in this case, Mother—has the burden to show the evidence was not sufficient to support the ICWA finding. (*Austin J.*, at p. 885.)

B. *Applicable Law*

ICWA<sup>4</sup> reflects “a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal

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<sup>4</sup> Our state Legislature incorporated ICWA’s requirements into California statutory law in 2006. (*In re Abigail A.* (2016) 1 Cal.5th 83, 91.)

standards that a state court . . . must follow before removing an Indian child from his or her family.” (*Austin J.*, *supra*, 47 Cal.App.5th at pp. 881–882.) Both ICWA and the Welfare and Institutions Code define 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(4); § 224.1, subds. (a) and (b) [incorporating federal definitions].)

The juvenile court and DCFS have “an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 . . . may be or has been filed, is or may be an Indian child.” (§ 224.2, subd. (a); see *In re Isaiah W.* (2016) 1 Cal.5th 1, 9, 11–12 (*Isaiah W.*)) This continuing duty can be divided into three phases: the initial duty to inquire, the duty of further inquiry, and the duty to provide formal ICWA notice. Although we discuss all three phases, it is only the last phase, the duty to provide formal ICWA notice, that is at issue here.

#### 1. Initial Duty to Inquire

The *duty to inquire* whether a child is an Indian child begins with “the initial contact,” i.e., when the referring party reports child abuse or neglect that jumpstarts DCFS investigation. (§ 224.2, subd. (a).) DCFS’s initial duty to inquire includes asking the child, parents, legal guardian, extended family members, and others who have an interest in the child whether the child is, or may be, an Indian child. (*Id.*, subd. (b).) Similarly, the juvenile court must inquire at each parent’s *first* appearance whether he or she “knows or has reason to know that the child is an Indian child.” (*Id.*, subd. (c).) The juvenile court must also require each parent to complete Judicial Council form

ICWA-020, Parental Notification of Indian Status. (Cal. Rules of Court,<sup>5</sup> rule 5.481(a)(2)(C).) The parties are instructed to inform the court “if they subsequently receive information that provides reason to know the child is an Indian child.” (25 C.F.R. § 23.107(a); § 224.2, subd. (c).)

## 2. Duty of Further Inquiry

As discussed in two recent cases, *Austin J., supra*, 47 Cal.App.5th at pages 883–884 and *D.S., supra*, 46 Cal.App.5th at pages 1048–1049, a duty of *further inquiry* is imposed when DCFS or the juvenile court has “*reason to believe* that an Indian child is involved” in the proceedings. (§ 224.2, subd. (e), italics added.) The Legislature did not define what constitutes “reason to believe.” (See *ibid.*)

*Further inquiry* as to the possible Indian status of the child includes: 1) interviewing the parents and extended family members to gather required information<sup>6</sup>; 2) contacting the Bureau of Indian Affairs and State Department of Social Services for assistance in identifying the tribes in which the child may be a member or eligible for membership in; and 3) contacting the tribes and any other person that may reasonably be expected to have information regarding the child’s membership or eligibility.

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<sup>5</sup> All further rule references are to the California Rules of Court unless otherwise stated.

<sup>6</sup> This required information includes: All known names of the Indian child, biological parents, grandparents, and great-grandparents, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information. (§ 224.3, subd. (a)(5).)

(§§ 224.2, subds. (e)(1)–(3) & 224.3, subds. (a)(5)(A)–(C); rule 5.481(a)(4) [sets forth same requirements].) Contact with a tribe must include, at a minimum, “telephone, facsimile, or electronic mail contact to each tribe’s designated agent” and include information “necessary for the tribe to make a membership or eligibility determination.” (§ 224.2, subd. (e)(3).)

### 3. Duty to Provide ICWA Notice

“The sharing of information with tribes at [the further] inquiry stage is distinct from formal ICWA notice, which requires a ‘reason to know’—rather than a ‘reason to believe’—that the child is an Indian child.” (*D.S., supra*, 46 Cal.App.5th at p. 1049.) While “reason to believe” is not defined, fortunately the term “reason to know” is defined by ICWA and its related California statute.

Under ICWA, the juvenile court has “reason to know” a child is an Indian child if one of six circumstances is present: “(1) Any participant in the proceeding . . . informs the court that the child is an Indian child; [¶] (2) Any participant in the proceeding . . . informs the court that it has discovered information indicating that the child is an Indian child; [¶] (3) The child . . . gives the court reason to know he or she is an Indian child; [¶] (4) The court is informed that the domicile or residence of the child, [or] the child’s parent . . . is on a reservation or in an Alaska Native village; [¶] (5) The court is informed that the child is or has been a ward of a Tribal court; or [¶] (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.” (25 C.F.R. § 23.107(c).)

Effective January 1, 2019, Assembly Bill No. 3176 (2017-2018 Reg. Sess.) amended the definition in section 224.2, subdivision (d), of when the court has *reason to know* a child is an Indian child—conforming California law to ICWA regulations.<sup>7</sup> Thus, as of January 1, 2019, section 224.2, subdivision (d)(1) through (d)(6) include the same six criteria as those under the federal regulations, in determining whether there is “reason to know” the child involved is an Indian child.

Once DCFS or the juvenile court has a *reason to know* an Indian child is involved, notice pursuant to ICWA must be sent to the pertinent tribe(s) via registered or certified mail. (§ 224.3, subd. (a)(1).) The notice must contain sufficient information to enable the tribe to “conduct a meaningful review of its records to determine the child’s eligibility for membership.” (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.) The required information includes the names, birthdates, birthplaces, and tribal enrollment information of the parents and other direct lineal ancestors of the child, such as grandparents. (§ 224.3, subd. (a)(5)(C).)

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<sup>7</sup> Prior to this amendment, the juvenile court or DCFS had “reason to know” the child was an Indian child if it was provided “information *suggesting* the child is a member of a tribe or eligible for membership . . . or one or more of the child’s biological parents, grandparents, or great-grandparents are or were a member of a tribe.” (See former § 224.3, subd. (b)(1), italics added; see Stats. 2018, ch. 833, §§ 5–6, pp. 9–11.) Also prior to this amendment, the duty of further inquiry was triggered once the court or DCFS had “*reason to know*” (see former § 224.3, subd. (c), italics added), whereas now, the duty of further inquiry is commenced once the court or DCFS has “*reason to believe*” (see § 224.2, subd. (e), italics added).

It is this “notice requirement, which . . . enables a tribe to determine whether the child is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding.” (*Isaiah W.*, *supra*, 1 Cal.5th at p. 5.) Thus, the juvenile court “has a responsibility to ascertain that [DCFS] has conducted an adequate investigation and cannot simply sign off on the notice as legally adequate without doing so.” (*In re K.R.* (2018) 20 Cal.App.5th 701, 709.)

C. *Analysis* <sup>8</sup>

As the facts before us are not disputed, we independently determine whether ICWA’s requirements were met. To do so, we first must determine whether—as a result of their initial inquiry— DCFS or the juvenile court had “reason to believe” the children were Indian children, requiring *further inquiry* of possible Indian heritage. If further inquiry was required, we then determine whether DCFS and the juvenile court had “reason to know” the children were Indian children, necessitating formal notice to pertinent tribes. We review the record for substantial evidence in support of the juvenile court’s finding that ICWA did not apply.

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<sup>8</sup> As a preliminary matter, we note that the juvenile court’s October 16, 2019 findings and orders from which Mother appeals occurred after the effective date of the amendments to section 224.3, so the amended provisions apply here. (See *A.M.*, *supra*, 47 Cal.App.5th at p. 321 [“Since Mother is appealing from the findings made at the September 6, 2019 . . . hearing . . . , the current ICWA statutes apply.”].)

### 1. Initial Inquiry

Section 224.2, subdivisions (a), (b), and (c), impose an initial duty of inquiry upon DCFS and the juvenile court, i.e., to ask all relevant involved persons whether the child may be an Indian child. (§ 224.2, subs. (a)–(c).) In the case before us, the juvenile court conducted its initial inquiry as to whether D.F., G.F., and B.F. are Indian children during Mother’s and Father’s first appearance at the June 2019 detention hearings. The court reviewed the ICWA-020 forms submitted by each parent. After noting Father indicated no Indian ancestry, the court stated Mother indicated she “may” have Indian ancestry from an “unknown tribe from New Mexico.” The court asked DCFS to “look into it” and “begin an investigation.”

DCFS argues Mother’s statement that she “may” have Indian ancestry, at most, suggested a mere possibility of Indian ancestry. DCFS contends the duty of further inquiry was not triggered.

We disagree. Based on representations by Mother that she may have Indian heritage from a tribe in New Mexico, the court correctly ordered DCFS to further inquire into Mother’s claim and investigate the allegation.

This is similar to the circumstances in *D.S.*, where after reviewing the ICWA-020 form submitted by D.S.’s aunt, stating she *may* have Indian ancestry with the Blackfoot tribe in Delaware, the court ordered DCFS to further inquire. (*D.S.*, *supra*, 46 Cal.App.5th at pp. 1046, 1054.) Based on representations that D.S.’s father may have Indian heritage, the court ordered DCFS “to investigate the allegation.” (*Id.* at p. 1046.) “Aunt’s statements regarding possible tribal affiliation were sufficient to establish a reason to believe” and “triggered a

duty to conduct a further inquiry.” (*Id.* at p. 1052.) And indeed, DCFS proceeded to conduct a further inquiry in *D.S.* by contacting the identified tribes. (*Id.* at p. 1047.)

While Mother in the case before us did not identify a specific tribe, she did specify it was a tribe from New Mexico, and similar to the aunt’s ICWA-020 form in *D.S.*, stated she *may* have Indian ancestry in her respective ICWA-020. We find this information is specific enough to trigger the duty of further inquiry. The initial inquiry conducted by the juvenile court here created a “*reason to believe*” the children possibly are Indian children. This explains why the juvenile court ordered DCFS to “look into it” and start an investigation, similar to what the juvenile court did in *D.S.* (*D.S.*, *supra*, 46 Cal.App.5th at p. 1046.)

## 2. Duty of Further Inquiry

DCFS proceeded to conduct a further inquiry.

As discussed *ante*, pursuant to section 224.2, subdivision (e), when DCFS has a “reason to believe,” it must satisfy three requirements—contacting the extended family, contacting the Bureau of Indian Affairs, and contacting the relevant tribes. Here, DCFS interviewed Mother, maternal grandfather, maternal grandmother, and other family members, in accordance with section 224.2, subdivision (e)(1). Mother’s parents and sibling are among those “extended family members” whom DCFS interviewed in gathering information to determine whether the proceeding involves an Indian child. (See Cal. Rules of Court, rule 5.481(a)(4)(A); 25 U.S.C. § 1903(2).)



DCFS learned that maternal grandfather’s family “believed they were of [N]ative American descent,” possibly from New York, “but that it was never proven.” DCFS also learned that MGG-GM, born in New Mexico, was “part [N]ative American.”

DCFS contacted the Bureau of Indian Affairs (in accordance with § 224.2, subd. (e)(2)) and—because neither Mother nor maternal relatives could identify one specific tribe—sent correspondence via certified mail to 21 tribes in New Mexico and nine tribes in New York to further inquire (in accordance with § 224.2, subd. (e)(3)). Based on the record before us, we find DCFS made a good faith effort to gather information about the children’s membership status or eligibility. DCFS’s inquiry obligation is “not an absolute duty to ascertain or refute Native American ancestry.” (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413.) Mother herself commented in her opening brief that DCFS “impressively investigated” her claims of possible Indian heritage, and conceded in her reply brief that DCFS “satisfied its duty of further inquiry when it identified 29 federally-recognized tribes, which the social worker contacted by mail.”

DCFS’s repeated efforts to gather information concerning the children’s maternal ancestry constitutes substantial evidence that DCFS met its duty of further inquiry.

### 3. Duty to Provide Formal ICWA Notice

This is the only phase where Mother argues the juvenile court erred. Note DCFS is “not required to ‘cast about’ for information or pursue unproductive investigative leads.” (*D.S.*, *supra*, 46 Cal.App.5th at p. 1053.) “There are two separate ICWA requirements which are sometimes conflated: the obligation to give notice to a tribe, and the obligation to conduct further inquiry to determine whether notice is necessary. Notice to a

tribe is required, under federal and state law, when the court knows or has reason to know the child *is* an Indian child.” (*A.M., supra*, 47 Cal.App.5th at p. 315.)

Here, we conclude the juvenile court and DCFS’s further investigation did not yield results that pushed their *reason to believe* the children are Indian children, to *reason to know* the children are Indian children. The juvenile court may find ICWA does not apply following “proper and adequate further inquiry and due diligence” by DCFS because “there is no reason to know whether the child is an Indian child” or because “the court does not have sufficient evidence to determine that the child is or is not an Indian child.” (§ 224.2, subs. (i)(2) and (g).)

We believe that is exactly what happened here. DCFS conducted its further inquiry and apprised the court of its progress. DCFS detailed the information gathered from its interviews with Mother and maternal relatives in the reports and Last Minute Informations filed with the court. DCFS additionally provided the court with copies of the responses it received from 24 tribes indicating the children are not Indian children. Having learned of no new information—either from Mother, her relatives, or the relevant tribes—that would give DCFS a “reason to know” the children are Indian children, DCFS informed the juvenile court during adjudication that it had been “over 60 days” since it received letters from the tribes indicating the children are not members. At most, after further inquiry, the court was left with the same nonspecific information it was provided at the initial appearance—only a suggestion that the children may have Indian ancestry.

A suggestion of Indian ancestry is not sufficient under ICWA or related California law to trigger the notice requirement.

(*Austin J.*, *supra*, 47 Cal.App.5th at pp. 886–887; *A.M.*, *supra*, 47 Cal.App.5th at p. 322.) As our colleagues from Division One explained on similar facts in *Austin J.*: “At most, these statements merely suggest the possibility the children may have Cherokee ancestry; Indian ancestry, however, is not among the statutory criteria for determining whether there is a *reason to know* a child is an Indian child. The statements, therefore, do not constitute information that a child ‘is an Indian child’ or information indicating that the child is an Indian child, as is now required under both California and federal law.” (*Austin J.*, at p. 887, italics added.)

The reviewing court in *A.M.* similarly found: “[T]he only specific information Mother provided was a statement that she was told and believed that she may have Indian ancestry with the Blackfeet and Cherokee tribes but was not registered.” (*A.M.*, *supra*, 47 Cal.App.5th at p. 322.) It further found: “At most, Mother had provided information indicating she may have Indian heritage. Although it would follow that the children might also have some Indian heritage, the information Mother provided . . . did not rise to the level of ‘information indicating that the child[ren] [are] . . . Indian child[ren].’” (*Id.* at p. 321.) If there is “‘insufficient reason to believe a child is an Indian child, notice need not be given.’” (*In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1520.) Here, DCFS’s further inquiry did not result in a *reason to know* the children are Indian children. We conclude the court’s finding that ICWA does not apply to the children is supported by substantial evidence. There was no obligation to give formal notice to the tribes and to file that notice with the court.

Finally, in the analysis portion of her opening brief, Mother cites and refers to a number of cases decided before the Legislature enacted changes to California's ICWA-related statutes. "Cases relying on such language are no longer controlling or persuasive on this point." (*Austin J.*, *supra*, 47 Cal.App.5th at p. 885.)

Based on the foregoing, because DCFS was not required to provide formal notice to the pertinent tribes, we do not reach Mother's argument that the ICWA notices may have lacked necessary information.

### **DISPOSITION**

The October 16, 2019 findings and orders are affirmed.

STRATTON, J.

We concur:

GRIMES, Acting P. J.

WILEY, J.

Filed 10/6/20

**CERTIFIED FOR PUBLICATION**  
**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**SECOND APPELLATE DISTRICT**  
**DIVISION EIGHT**

In re Dominic F. et al., Persons  
Coming Under the Juvenile Court  
Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.B.,

Defendant and Appellant.

B302482

(Los Angeles County  
Super. Ct. No. 19LJJP00406A–C)

ORDER CERTIFYING OPINION  
FOR PUBLICATION

[NO CHANGE IN JUDGMENT]

**THE COURT:**

The opinion in the above-entitled matter filed on September 30, 2020, was not certified for publication in the Official Reports. For good cause, it now appears that the opinion should be published in the Official Reports and it is so ordered.

There is no change in the judgment.

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GRIMES, Acting P. J.

STRATTON, J.

WILEY, J

46 Cal.App.5th 1041  
Court of Appeal, Fourth District, Division 1,  
California.

IN RE D.S., a Person Coming Under the Juvenile  
Court Law.  
San Diego County Health And Human Services  
Agency, Plaintiff and Respondent,  
v.  
M.J., Defendant and Appellant.

Do76517  
|  
Filed 3/18/2020

### Synopsis

**Background:** County health and human services agency filed dependency petition on behalf of child. Following jurisdiction and disposition hearing, the Superior Court, San Diego County, No. EJ4426, Gary Bubis, J., sustained allegations of the petition, placed child in foster home, ordered reunification services for child's paternal aunt, and denied reunification services for mother. Mother appealed.

**[Holding:]** The Court of Appeal, Guerrero, J., held that substantial evidence supported juvenile court's finding that agency complied with its statutory obligation under **Indian Child Welfare Act** (ICWA) and state law to conduct further inquiry into whether child was an Indian child.

Affirmed.

**Procedural Posture(s):** On Appeal; Neglect and Dependency Petition.

West Headnotes (7)

**[1]** **Indians** — Notice of pending state proceedings and right to intervene

If statutory inquiry in dependency proceeding establishes a reason to know that an Indian child within meaning of the **Indian Child Welfare Act** (ICWA) is involved, the notice provided to pertinent tribe must include enough information for the tribe to conduct a meaningful review of its

records to determine the child's eligibility for membership, including the identifying information for the child's biological parents, grandparents, and great-grandparents, to the extent known. **Indian Child Welfare Act** of 1978 § 4, 25 U.S.C.A. § 1903(4); Cal. Welf. & Inst. Code §§ 224.1(a), 224.3(a, b).

1 Cases that cite this headnote

**[2]** **Indians** — Actions and proceedings in general

On appeal in juvenile dependency case, the Court of Appeal reviews the juvenile court's **Indian Child Welfare Act** (ICWA) findings for substantial evidence; but where the facts are undisputed, the Court of Appeal independently determines whether ICWA's requirements have been satisfied. **Indian Child Welfare Act** of 1978, § 2 et seq., 25 U.S.C.A. § 1901 et seq.; Cal. Welf. & Inst. Code § 224.2(i)(2).

1 Cases that cite this headnote

**[3]** **Indians** — Actions and proceedings in general

On mother's appeal from order entered in juvenile dependency case, the Court of Appeal would exercise its discretion to consider mother's argument that county health and human services agency's **Indian Child Welfare Act** (ICWA) inquiry into whether child was an Indian child was inadequate, even though mother raised this argument for the first time in her reply brief on appeal; agency had fully briefed the issue of ICWA compliance in its respondent's brief, and Indian tribes had interest in ascertaining whether child was an Indian child. **Indian Child Welfare Act** of 1978 § 4, 25 U.S.C.A. § 1903(4); Cal. Welf. & Inst. Code §§ 224.1(a), 224.2.

1 Cases that cite this headnote

**[4] Appeal and Error** → Reply briefs

Points raised for the first time on appeal in a reply brief will ordinarily not be considered by appellate court.

**[5] Appeal and Error** → Reply briefs

An appellate court may properly exercise its discretion to consider a contention raised in a reply brief when the respondent fully briefed the issue in the respondent's brief and, therefore, is not deprived of an opportunity to address the issue.

**[6] Indians** → Actions and proceedings in general

Substantial evidence supported juvenile court's finding, in dependency case, that county health and human services agency complied with its statutory obligation under **Indian Child Welfare Act** (ICWA) and state law to conduct further inquiry into whether child was an Indian child, although agency did not contact child's great grandmother who had stated to child's aunt that child's great-great-great-great grandmother was affiliated with tribe; agency complied with obligation to interview "extended family members" by interviewing child's aunt, aunt reported that she had no **reason to believe** child was Indian child, and agency made numerous attempts to contact 12 tribes based on limited information provided by aunt. **Indian Child Welfare Act** of 1978 § 4, 25 U.S.C.A. §§ 1903(2), 1903(4); Cal. Welf. & Inst. Code §§ 224.1(c), 224.2(e).

1 Cases that cite this headnote

**[7] Indians** → Actions and proceedings in general

When conducting further inquiry under **Indian Child Welfare Act** (ICWA) and state law into whether child is Indian child, county welfare department is not required to cast about for information or pursue unproductive investigative leads. **Indian Child Welfare Act** of 1978 § 4, 25 U.S.C.A. § 1903(4); Cal. Welf. & Inst. Code § 224.2(e).

**Witkin Library Reference:** 16 Witkin, Summary of Cal. Law (11th ed. 2017) Juvenile Court Law, § 154 [Duty To Inquire into Indian Status; In General.]

**\*\*904** APPEAL from an order of the Superior Court of San Diego County, **Gary M. Bubis**, Judge. Affirmed. (Super. Ct. No. EJ4426)

**Attorneys and Law Firms**

**Johanna R. Shargel**, under appointment by the Court of Appeal, for Defendant and Appellant.

**Thomas E. Montgomery**, County Counsel, Caitlin E. Rae, Chief Deputy County Counsel, and Lisa M. Maldonado, Deputy County Counsel, for Plaintiff and Respondent.

**Opinion**

**GUERRERO, J.**

**\*1045** M.J. (Mother) appeals the order entered following the jurisdiction and disposition hearing in the juvenile dependency case of her minor child, D.S. Mother contends the court erred by not complying with the inquiry provisions of the **Indian Child Welfare Act** (25 U.S.C. § 1901 et seq.) (ICWA). We affirm.

**\*\*905 \*1046** FACTUAL AND PROCEDURAL BACKGROUND

“In accord with the usual rules on appeal, we state the facts in the manner most favorable to the dependency court’s order.” ( [In re Janee W.](#) (2006) 140 Cal.App.4th 1444, 1448, fn. 1, 45 Cal.Rptr.3d 445.) In light of the limited scope of this appeal, we provide an abbreviated summary of the dependency proceedings.

In July 2019, the San Diego County Health and Human Services Agency (Agency) petitioned the juvenile court under [Welfare and Institutions Code section 300, subdivision \(f\)](#),<sup>1</sup> on behalf of 12-year-old D.S. D.S. was living with his paternal aunt (Aunt), later determined to be his presumed mother. The Agency alleged that D.S.’s father was deceased, Mother had previously caused the death of another minor, and Aunt was no longer able to care for D.S. As discussed in the detention report, Mother’s parental rights were terminated after she was charged and convicted of killing D.S.’s brother. D.S. had been placed in the care of his father, who subsequently died suddenly in March 2018. Aunt assumed care for D.S., but reported to the Agency that she could not currently care for D.S. due to her own health issues.

At the detention hearing, the court found the Agency had made a prima facie showing under [section 300](#) and ordered that D.S. be detained in out-of-home care. Mother denied any Indian ancestry. Based on representations by Aunt that D.S.’s father may have Indian heritage, however, the court found that ICWA may apply and ordered the Agency to investigate the allegation.<sup>2</sup>

In a report prepared for the jurisdiction and disposition hearing, the Agency stated it had “reason to know” ICWA did not apply. The Agency detailed the inquiry used to reach this conclusion, explaining that Aunt contacted her grandmother—D.S.’s great-grandmother—to inquire about her Indian heritage. The great-grandmother stated that her great-grandmother—D.S.’s great-great-great-great-grandmother—was “affiliated with the Sioux and Blackfeet tribes.” The Agency’s report summarizes the additional information received from Aunt as follows: “[Aunt] denied that she or [her grandmother] have ever lived on an Indian reservation, have a tribal enrollment number or identification card indicating membership/citizenship in an Indian tribe. [Aunt] denied she has any **reason to believe** [D.S.] is an Indian child. She also denied that she or [her grandmother] had further information.”

**\*1047** In an addendum report, the Agency indicated it was conducting a further inquiry based on the information it had previously gathered from Aunt (summarized *ante*). The Agency stated it was “contacting the identified tribes” to determine whether D.S. was a member, and that it would

provide the results of its inquiry to the court in a future report.

In a second addendum report, the Agency explained that its ICWA specialist contacted, or attempted to contact, multiple Sioux and Blackfeet tribes. One tribe responded that D.S. was not a member; two tribes agreed to check their records regarding the child’s tribal eligibility;<sup>3</sup> one tribe stated that “formal ICWA notice **\*\*906** would be needed to determine whether the child is a member or eligible for enrollment”; and the Agency made multiple attempts to communicate with eight other tribes.<sup>4</sup>

At the jurisdictional hearing, the Agency asked the court to find the Agency “made an adequate inquiry and find there is no reason to know that this is an Indian child,” and, therefore, that ICWA does not apply. The court agreed, finding “that the Agency so far has used reasonable inquiry, and there is no **reason to believe** or know that [ICWA] applies at this time. The information is so attenuated that it’s really difficult to track it down, and I believe the Agency has made more than a reasonable effort to try and do so.” In its minute order, the court found “the Agency has completed further inquiry as to [ICWA]. The [c]ourt finds that there is no **reason to believe** or know that [ICWA] applies.”

The juvenile court sustained the allegations of the petition under [section 300, subdivision \(f\)](#). The court placed D.S. in his foster home and gave the Agency discretion to allow unsupervised and overnight visits with Aunt. The court ordered reunification services for Aunt but denied reunification services for Mother.

Mother appealed.

## DISCUSSION

Mother argues that the juvenile court and the Agency failed to satisfy their inquiry obligations under ICWA, and asks that we remand the matter with directions for the Agency to perform further inquiry in compliance with section 224.2, subdivision (e).

**\*1048 I.**



### ICWA Requirements and Standard of Review

Congress enacted ICWA in 1978 to address concerns regarding the separation of Indian children from their tribes through adoption or foster care placement, usually in non-Indian homes. ( [In re Isaiah W.](#) (2016) 1 Cal.5th 1, 7, 203 Cal.Rptr.3d 633, 373 P.3d 444 ( [Isaiah W.](#) ).) ICWA established minimum standards for state courts to follow before removing Indian children from their families and placing them in foster care or adoptive homes. ( [25 U.S.C. § 1921](#); [25 C.F.R. § 23.106](#); see [In re Elizabeth M.](#) (2018) 19 Cal.App.5th 768, 783, 228 Cal.Rptr.3d 213.) In 2006, California adopted various procedural and substantive provisions of ICWA. ( [In re Autumn K.](#) (2013) 221 Cal.App.4th 674, 703-704, 164 Cal.Rptr.3d 720.) In 2016, new federal regulations were adopted concerning ICWA compliance. ( [81 Fed.Reg. 38864 \(June 14, 2016\)](#), revising 25 C.F.R. Part 23.) Following the enactment of the federal regulations, California made conforming amendments to its statutes, including portions of the Welfare and Institutions Code related to ICWA notice and inquiry requirements. (Assem. Bill No. 3176 (2017-2018 Reg. Sess.); [In re A.W.](#) (2019) 38 Cal.App.5th 655, 662, fn. 3, 251 Cal.Rptr.3d 50 ( [A.W.](#) ).) Those changes became effective January 1, 2019 ( [A.W.](#), at p. 662, fn. 3, 251 Cal.Rptr.3d 50.), and govern here.<sup>5</sup>

The new statute specifies the steps the Agency and the juvenile court are required to take in determining a child's possible **\*\*907** status as an Indian child. An "Indian child" is defined in the same manner as under federal law, i.e., 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\(4\)](#); accord [Welf. & Inst. Code, § 224.1, subd. \(a\)](#) [adopting the federal definition].) The Agency and the juvenile court have "an affirmative and continuing duty" in every dependency proceeding to determine whether ICWA applies. ( [Welf. & Inst. Code, § 224.2, subd. \(a\)](#) ["The duty to inquire [whether a child is or may be an Indian child] begins with the initial contact, including, but not limited to, asking the party reporting child abuse or neglect whether he or she has any information that the child may be an Indian child."]; [Cal. Rules of Court, rule 5.481\(a\)](#); see [Isaiah W.](#), *supra*, 1 Cal.5th at p. 14, 203 Cal.Rptr.3d 633, 373 P.3d 444 ["juvenile court has an affirmative and

continuing duty in all dependency proceedings to inquire into a child's Indian status"].)

[Section 224.2, subdivision \(b\)](#) specifies that once a child is placed into the temporary custody of a county welfare department, such as the **\*1049** Agency, the duty to inquire "includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child." When the Agency has "**reason to believe**" that an Indian child is involved, further inquiry regarding the possible Indian status of the child is required. ( [§ 224.2, subd. \(e\)](#).) The required further inquiry includes (1) interviewing the parents and extended family members;<sup>6</sup> (2) contacting the Bureau of Indian Affairs and State Department of Social Services; and (3) contacting tribes the child may be affiliated with, and anyone else, that might have information regarding the child's membership or eligibility in a tribe.<sup>7</sup> At this stage, contact with a tribe "shall, at a minimum," include telephone, facsimile, or electronic mail contact to each tribe's designated agent for receipt of ICWA notice, and "sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case." ( [§ 224.2, subd. \(e\)\(3\)](#).)

The sharing of information with tribes at this inquiry stage is distinct from formal ICWA notice, which requires a "reason to know"—rather than a "**reason to believe**"—that **\*\*908** the child is an Indian child.<sup>8</sup> Unlike the term "**reason to believe**," which is not defined by statute, a "reason to know" exists under any of the following circumstances: "(1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court that the child is an Indian child; [¶] (2) The **\*1050** residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native village; [¶] (3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child; [¶] (4) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child; [¶] (5) The court is informed that the child is or has been a ward of a tribal court; and [¶] (6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe." ( [§ 224.2, subd. \(d\)](#).)

<sup>11</sup>If the inquiry establishes a reason to know an Indian child

is involved, notice must be provided to the pertinent tribes. (§ 224.3, subs. (a), (b).) The notice must include enough information for the tribe to “conduct a meaningful review of its records to determine the child’s eligibility for membership” ( [In re Cheyanne F.](#) (2008) 164 Cal.App.4th 571, 576, 79 Cal.Rptr.3d 189), including the identifying information for the child’s biological parents, grandparents, and great-grandparents, to the extent known ( [In re Francisco W.](#) (2006) 139 Cal.App.4th 695, 703, 43 Cal.Rptr.3d 171; § 224.3, subd. (a)(5)(C)).

The juvenile court may alternatively make a finding that ICWA does *not* apply because the Agency’s further inquiry and due diligence was “proper and adequate” but no “reason to know” whether the child is an Indian child was discovered. (§ 224.2, subs. (i)(2), (g).) Even if the court makes this finding, the Agency and the court have a continuing duty under ICWA, and the court “shall reverse its determination if it subsequently receives information providing **reason to believe** that the child is an Indian child and order the social worker or probation officer to conduct further inquiry.” (*Id.*, subd. (i)(2).)

Previously, before the 2019 amendments discussed *ante*, the same distinction existed between the inquiry and notice requirements of ICWA. Former section 224.3 “outline[d] the scope of a trial court’s and a county welfare department’s duty of *inquiry* under ICWA” (*In re J.L.* (2017) 10 Cal.App.5th 913, 919, 217 Cal.Rptr.3d 201 (*J.L.*)), and former section 224.2 “outline[d] specific *notice* requirements that apply ‘[i]f the court, a social worker, or probation officer knows or has reason to know that an Indian child is involved.’ ” (*Id.* at p. 920, 217 Cal.Rptr.3d 201.)<sup>9</sup> However, the prior statute did not include the **\*1051** language “**reason to believe**”—now found in section 224.2, subdivision (e)—and instead specified that ICWA’s inquiry and notice obligations **\*909** were triggered when the juvenile court or the Agency “knows or has reason to know that an Indian child is involved.” (*Id.* at pp. 919-920, 217 Cal.Rptr.3d 201 [quoting former § 224.3, subd. (c) (further inquiry requirement) and § 224.2 (notice requirement) ].)

<sup>12</sup>On appeal, we review the juvenile court’s ICWA findings for substantial evidence. ( [In re Hunter W.](#) (2011) 200 Cal.App.4th 1454, 1467, 135 Cal.Rptr.3d 355 ( [Hunter W.](#)); see § 224.2, subd. (i)(2) [ICWA findings “subject to reversal based on sufficiency of the evidence”].) But where the facts are undisputed, we independently determine whether ICWA’s requirements have been satisfied. (*J.L.*, *supra*, 10 Cal.App.5th at p. 918, 217 Cal.Rptr.3d 201.)<sup>10</sup>

## II.

### ICWA Compliance

<sup>13</sup> <sup>14</sup> <sup>15</sup>In her opening brief, Mother initially focused on challenging the Agency’s compliance with the *notice*, rather than the *inquiry*, requirements of ICWA, contending the Agency “flouted ... the notification requirements” and “[n]o formal ICWA notice ever issued.” After the Agency responded that notice was not required under the new statutory framework discussed *ante*, Mother argued that the Agency’s inquiry into D.S.’s possible Indian heritage was inadequate under the new statutory framework. Despite the principle that “ ‘[p]oints raised for the first time in a reply brief will ordinarily not be considered’ ” ( [Jameson v. Desta](#) (2009) 179 Cal.App.4th 672, 674, fn. 1, 101 Cal.Rptr.3d 345 ( [Jameson](#))), we exercise our discretion to consider the merits of Mother’s claim of inadequate compliance with the inquiry requirements of ICWA.<sup>11</sup>

**\*1052** As detailed *ante*, section 224.2 creates three distinct duties regarding ICWA in dependency proceedings. First, from the Agency’s initial contact with a minor and his family, the statute imposes a duty of **\*910** inquiry to ask all involved persons whether the child may be an Indian child. (§ 224.2, subs. (a), (b).) Second, if that initial inquiry creates a “**reason to believe**” the child is an Indian child, then the Agency “shall make *further inquiry* regarding the possible Indian status of the child, and shall make that inquiry as soon as practicable.” (*Id.*, subd. (e), italics added.) Third, if that further inquiry results in a reason to *know* the child is an Indian child, then the formal notice requirements of section 224.3 apply. (See § 224.2, subd. (c) [court is obligated to inquire at the first appearance whether anyone “knows or has reason to know that the child is an Indian child”], *id.*, subd. (d) [defining circumstances that establish a “reason to know” a child is an Indian child]; § 224.3 [ICWA notice is required if there is a “reason to know” a child is an Indian child as defined under § 224.2, subd. (d)].)

<sup>16</sup>Here, both parties agree that Aunt’s statements regarding possible tribal affiliation were sufficient to establish a **reason to believe** D.S. is an Indian child and triggered a

duty to conduct a further inquiry. Thus, the sole contested issue is the adequacy of the Agency's further inquiry.<sup>12</sup> We conclude that substantial evidence supports the juvenile court's finding that the Agency complied with its obligations pursuant to [section 224.2, subdivision \(e\)](#).

When the Agency has a **reason to believe** a child is an Indian child, as in this case, it must satisfy three requirements. First, the Agency must interview the parents, Indian custodian, and extended family members to gather relevant information, specified by statute, regarding the details of the child's birth, family members, and possible tribal affiliations. ([§ 224.2, subd. \(e\)\(1\)](#); see also [§ 224.3, subd. \(a\)\(5\)](#).) Second, the Agency must contact "the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in **\*1053** which the child may be a member, or eligible for membership in, and contacting the tribes and any other person that may reasonably be expected to have information regarding the child's membership status or eligibility." ([§ 224.2, subd. \(e\)\(2\)](#).) Third, the Agency must contact "the tribe or tribes and any other person that may reasonably be expected to have information regarding the child's membership, citizenship status, or eligibility." (*Id.*, subd. (e)(3).) The Agency's contact with the tribe "shall include sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case." (*Ibid.*)

The record adequately supports the juvenile court's finding that the Agency complied with these requirements. As part of its duty to inquire about a child's Indian ancestry pursuant to subdivision (e)(1), the Agency must interview extended family members. Under both ICWA and California law, "extended family members" includes the 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." ([25 U.S.C. § 1903\(2\)](#); [\\*\\*911 Welf. & Inst. Code, § 224.1, subd. \(c\)](#).) It does not include great-grandparents. The Agency therefore complied with this obligation by interviewing Aunt, the person who qualified as an "extended family member" within the meaning of ICWA.

<sup>12</sup>The Agency has a further obligation under [Welfare & Institutions Code section 224.2, subdivision \(e\)\(3\)](#), to contact "the tribe or tribes and any other person that *may reasonably be expected to have information* regarding the child's membership, citizenship status, or eligibility." ([Welf. & Inst. Code § 224.2, subd. \(e\)\(3\)](#), italics added; see

[In re K.R. \(2018\) 20 Cal.App.5th 701, 709, 229 Cal.Rptr.3d 451](#) ([K.R.](#)) ["a social services agency has the obligation to make a meaningful effort to locate and interview extended family members to obtain whatever information they may have as to the child's possible Indian status"].) Although D.S.'s great-grandmother may fall within this category, the Agency reasonably could conclude (based on its further communications with Aunt) that no further inquiry was needed because there was no further information of value to obtain from this third party. The Agency is not required to "cast about" for information or pursue unproductive investigative leads. ([In re Levi U. \(2000\) 78 Cal.App.4th 191, 199, 92 Cal.Rptr.2d 648](#).) Based on this record—including Aunt's representations, after having spoken with her grandmother, that she had no "**reason to believe** [D.S.] is an Indian child," and had no "further information" to give the Agency—there was substantial evidence supporting the court's conclusion that the Agency complied with its further inquiry obligations.

Also pursuant to [section 224.2, subdivision \(e\)\(3\)](#), the Agency was required to contact the pertinent tribes and, in doing so, was required to "shar[e] **\*1054** information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case." ([§ 224.2, subd. \(e\)\(3\)](#).) The juvenile court did not err in finding that the Agency complied with these obligations. Although the Agency could have documented some of its efforts in more detail, it provided sufficient information to support the court's findings. The Agency explained its numerous attempts to contact twelve tribes based on the limited information provided by Aunt. The Agency obtained one response stating the child was not a member, and two tribes failed to notify the Agency of the child's membership status after agreeing to check their records. For eight of the remaining tribes, the Agency made repeated attempts to contact them, but it was ultimately unsuccessful because the tribes did not respond to the Agency's requests (or in two cases their voicemail boxes were full). One tribe informed the Agency that it would require a formal ICWA notice, but formal ICWA notice was not yet triggered under section 224.3, and there is no reason to conclude there was any further information to provide regarding the child's "membership or eligibility determination." ([§ 224.2, subd. \(e\)\(3\)](#).) As the juvenile court concluded, the Agency followed the proper procedures in conducting its further inquiry, but the limited information provided by Aunt was too attenuated for the Agency to do anything further.

In sum, the juvenile court's finding that the Agency completed its further inquiry is supported by the evidence.

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Similarly, there is substantial evidence supporting the juvenile court's conclusion that "there is no **reason to believe** or know that [ICWA] applies." Before finding ICWA inapplicable, the court must find that the Agency conducted a "proper and adequate further inquiry" and exercised "due diligence to **§ 224.1 identify and work with**" all of the pertinent tribes. (**§ 224.2, subs. (i)(2), (g).**) For reasons we have discussed *ante*, the court made an appropriate finding based on this record and the circumstances before it.

The juvenile court's order is affirmed.

WE CONCUR:

McCONNELL, P. J.

HUFFMAN, J.

**All Citations**

46 Cal.App.5th 1041, 259 Cal.Rptr.3d 903, 20 Cal. Daily Op. Serv. 2705, 2020 Daily Journal D.A.R. 2710

**DISPOSITION****Footnotes**

- <sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise stated.
- <sup>2</sup> Aunt completed a parental notification of Indian status form stating she may have Indian ancestry with the "Blackfoot" tribe in Delaware.
- <sup>3</sup> As of the date of the Agency's report, these two tribes had not responded to the Agency's inquiries.
- <sup>4</sup> Two of these eight tribes did not answer telephone calls and their voicemail boxes were full, and six of them did not return voicemail messages left by the Agency. The Agency attempted to contact each of the eight tribes at least two times.
- <sup>5</sup> The parties do not dispute that the new statutory framework applies in this case, in which the hearings all occurred after January 1, 2019. Unless otherwise specified, statutory references are to the code sections as currently numbered.
- <sup>6</sup> Unless otherwise defined by the law or custom of the Indian child's tribe, the term "extended family members" shall mean "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." (**25 U.S.C. § 1903(2)**); accord **§ 224.1, subd. (c)** [adopting ICWA definition of extended family member].)
- <sup>7</sup> Specifically, **section 224.2, subdivision (e)** provides in relevant part: "Further inquiry includes, but is not limited to, all of the following: **(1)** Interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.3 [ICWA's notice provisions]. **(2)** Contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member, or eligible for membership in, and contacting the tribes and any other person that may reasonably be expected to have information regarding the child's membership status or eligibility. **(3)** Contacting the tribe or tribes and any other person that may reasonably be expected to have information regarding the child's membership, citizenship status, or eligibility." **California Rules of Court, rule 5.481(a)(4)** sets forth these same requirements.

**In re D.S., 46 Cal.App.5th 1041 (2020)**

259 Cal.Rptr.3d 903, 20 Cal. Daily Op. Serv. 2705, 2020 Daily Journal D.A.R. 2710

- <sup>8</sup> See section 224.3, subdivision (a) [“If the court, a social worker, or probation officers knows or has reason to know, as described in [subdivision \(d\) of Section 224.2](#), that an Indian child is involved, notice pursuant to Section 1912 of [ICWA] shall be provided for hearings that may culminate in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement, as described in [paragraph \(1\) of subdivision \(d\) of Section 224.1.](#)”].
- <sup>9</sup> Former section 224.3, subdivision (b) “outline[d] the circumstances ‘that may provide reason to know the child is an Indian child,’ including “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.” (*Id.* at p. 919, 217 Cal.Rptr.3d 201 [quoting former § 224.3, subd. (b) ].) Former section 224.3, subdivision (c) “specifie[d] that ‘[i]f the court, social worker, or probation officer knows or has reason to know that an Indian child is involved,’ the social worker must make ‘further inquiry’ concerning the possible American Indian status of the child.” (*Ibid.* [quoting former § 224.3, subd. (c) ]; see *id.* at pp. 919-920, 217 Cal.Rptr.3d 201 [duty of further inquiry included “interviewing the parents, Indian custodian, and extended family members to gather the information required” to complete ICWA notices].)
- <sup>10</sup> Mother contends that the de novo standard of review applies because the underlying facts are undisputed. (See [Dwayne P. v. Superior Court \(2002\) 103 Cal.App.4th 247, 254, 126 Cal.Rptr.2d 639.](#)) Our conclusion in this case would be the same under either standard of review.
- <sup>11</sup> An appellate court may properly exercise its discretion to consider a contention raised in a reply brief when the respondent fully briefed the issue in the respondent’s brief and, therefore, is not deprived of an opportunity to address the issue. ([Jameson, supra, 179 Cal.App.4th at p. 674, fn. 1, 101 Cal.Rptr.3d 345.](#)) Here, the Agency fully briefed the issue of ICWA compliance under the amended statutory framework in its respondent’s brief. Moreover, because Indian tribes have an interest in ascertaining whether a child in a dependency action is an Indian child, we address the merits of the ICWA claim despite any defects in a parent’s brief. (See, e.g., [In re Jonathon S. \(2005\) 129 Cal.App.4th 334, 340, 28 Cal.Rptr.3d 495](#) [declining to find a waiver when mother omitted an argument in her opening brief “given concerns that have been expressed about allowing a parent to waive a tribe’s right to ICWA notice”]; [In re Suzanna L. \(2002\) 104 Cal.App.4th 223, 231-232, 127 Cal.Rptr.2d 860](#) [notice requirements serve the interests of the Indian tribes and violations cannot be waived by a parent’s failure to raise them].)
- <sup>12</sup> The Agency argues that the standard for determining whether there is a “reason to know” a child is an Indian child—triggering the notice requirement—has changed under the amended statute, and that notice is no longer required upon a mere suggestion that the child is a member of a tribe. We need not address this argument because we resolve this case based on the inquiry requirements of ICWA and California law, and it is undisputed that the information provided by Aunt triggered the Agency’s further inquiry obligations.

Filed 5/7/20 Certified for Publication 6/5/20 (order attached)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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In re M.W., a Person Coming Under the Juvenile  
Court Law.

C089997

SACRAMENTO COUNTY DEPARTMENT OF  
CHILD, FAMILY, AND ADULT SERVICES,

(Super. Ct. No. JD239507)

Plaintiff and Respondent,

v.

A.C.,

Defendant and Appellant.

A.C., father of the minor, appeals from the juvenile court’s order terminating his parental rights. (Welf. & Inst. Code, §§ 366.26, 395.)<sup>1</sup> He contends the juvenile court and the Sacramento County Department of Child, Family, and Adult Services

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

(Department) failed to comply with the requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). We will affirm the juvenile court's orders.

## I. BACKGROUND

Because the sole issue on appeal is ICWA compliance, a detailed recitation of the non-ICWA related facts and procedural history is unnecessary to our resolution of this appeal.

### *Proceedings Prior to Father's Appearance*

On December 4, 2018, the Department filed a dependency petition on behalf of the newborn minor pursuant to section 300, subdivisions (b) and (j). The petition alleged the minor suffered, or was at substantial risk of suffering, harm due to substance abuse by mother and alleged father M.W. The petition further alleged substantial risk to the minor due to the abuse or neglect of, and eventual termination of mother's parental rights over, the minor's three half-siblings.

On November 30, 2018, mother and M.W. reported they believed M.W. was the minor's biological father but requested a paternity test for confirmation. Mother also reported the maternal grandfather had Native American heritage with the Apache Tribe, later confirming her claim in her parental notification of Indian status form (ICWA-020). M.W. denied having any Indian ancestry.

At the December 5, 2018, detention hearing, the juvenile court made ICWA orders as to mother and ordered the minor detained.<sup>2</sup>

On December 12, 2018, the Department interviewed mother in custody and learned A.C. (father) could potentially be the minor's biological father. Mother was unable to provide father's contact information, but stated he was active on social media

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<sup>2</sup> Father does not challenge ICWA compliance or the court's ICWA findings as to mother. ICWA-related facts and procedure as to mother are mentioned only to provide context or where relevant to father's issue on appeal.

and promised to provide the Department with his personal information upon her release from custody. Several weeks later, the Department informed mother M.W. was excluded from the paternity results and asked for father's identifying information. Mother eventually provided father's telephone number, which the Department used to attempt to contact father without success.

On December 24, 2018, the Department filed a declaration regarding its ICWA investigation as to mother, including that notices were sent to the Bureau of Indian Affairs (BIA), the Secretary of the Interior, and numerous Apache Tribes, and that the notices contained information gleaned from mother's previous dependency cases involving the minor's half-siblings regarding mother and the maternal relatives. The declaration also noted previous findings by the juvenile court that the ICWA did not apply as to each of the minor's three half-siblings.

The January 9, 2019, jurisdiction/disposition report recommended that the court sustain the allegations in the petition and bypass mother and M.W. for reunification services.

No parent was present for the January 9, 2019 jurisdiction/disposition hearing. The court ordered the Department to continue its search for father and, upon locating him, inform him of the proceedings and his options for establishing paternity, and to make ICWA inquiry. At the parties' request, the court continued the matter to complete ICWA noticing.

From January 16, 2019, to March 12, 2019, the Department was unable to locate father.

On February 4, 2019, the Department reported that five tribes confirmed the minor was not eligible for enrollment and three tribes had yet to respond. The Department subsequently reported it was still awaiting responses from the three remaining tribes.

At the February 13, 2019 continued jurisdiction/disposition hearing, the court sustained the allegations in the amended petition, bypassed mother for services,



scheduled an ICWA compliance hearing in March 2019, and scheduled a section 366.26 hearing in June 2019.

On March 13, 2019, the Department reported it finally made telephonic contact with father.

The Department reported that, as of March 26, 2019, it received confirmation from all but one of the tribes that the minor was not enrolled or eligible for enrollment.

### ***Proceedings After Father's Appearance***

Father appeared in court on March 27, 2019, and requested paternity testing to determine whether the minor was his biological child. The court authorized a paternity test and set the matter for a paternity hearing.

The April 2019 addendum report filed by the Department stated the paternity test results confirmed father was the biological father of the minor. The Department contacted father on April 22, 2019, to inform him of the paternity results and inquire about any potential Indian ancestry. Father stated, “ ‘He [the minor] is mine and I want to raise him.’ ” Father reported he had Indian ancestry but was neither a member of, nor seeking membership in, any tribe. He also stated his grandparents “may have membership.”

On May 1, 2019, the court appointed counsel for father and found him to be the biological father of the minor. The court asked father whether he had any Native American heritage. Father responded, “I don't know.” When asked if he knew of any relatives who may have knowledge of potential Native American heritage, father replied, “No.” The court then asked the paternal aunt, who was present in the courtroom, whether she had any knowledge of Native American heritage in the family. The paternal aunt replied, “It's believed that we do have; I don't have confirmation,” adding that she did not know which tribe. The court ordered the Department to conduct further ICWA inquiry of father's relatives and continued the paternity hearing. That same day, father

filed a parental notification of Indian status writing “may have” on the line asking the name of a band of which he might be a member or eligible for membership.

The Department filed an addendum report on May 13, 2019, regarding the Department’s ICWA inquiry of father and his relatives. The report stated the social worker contacted father on May 2, 2019, regarding potential Native American ancestry. Father provided his telephone number and the paternal aunt’s telephone number and stated there were no relatives other than the paternal aunt who might have information regarding potential Indian heritage. That same day, the social worker contacted the paternal aunt, who reported she did not think any relative knew which tribe they were affiliated with and she did not think any member of her family was a member of a tribe.

The report also stated that, on May 6, 2019, the social worker contacted the paternal grandfather, who reported the paternal great-great-grandmother was part Navajo and the paternal great-great-great-grandfather was part Apache. The paternal grandfather reported that his family had not been involved with the reservation for generations, but he believed they had some relatives who used to live on, or were currently living on, reservations in Colorado and other states. The paternal grandfather said he would attempt to contact some relatives to gather more information. When the social worker later contacted the paternal grandfather and requested the relatives’ contact information so that the social worker could contact them directly, the paternal grandfather refused to provide that information.

At the continued paternity hearing on May 15, 2019, the court acknowledged receipt of the May 13, 2019 addendum report and ordered as follows: “The Department needs to contact the [BIA] and the State Department of Social Services. The Department also needs to contact the tribes, and at a minimum that contact must include telephone, facsimile or electronic mail contact to each tribe’s designated agent. If the tribes fail to respond, the ICWA guidelines at page 22 requires multiple requests to the tribe.” Father’s counsel stated father wanted to confirm “that there is possible Apache and

Cherokee heritage,” which father noted was “[o]ut of Colorado.” The court recalled that the paternal grandfather reported the “family is part Navajo and part Apache” and asked father whether he wished to add any additional tribes to that list. Father responded, “Then, I guess, if that’s my father’s words then, I guess, you can go by that. That’s fine.” The Department and the court requested clarification from father as to whether he believed he may have Cherokee heritage. Father simply deferred to the statements of his family members. Given father’s earlier statements, the court ordered the Department to include Cherokee tribes in its ICWA inquiry efforts. The court’s written order stated as follows: “There is no reason to know the [minor] is an Indian child. However, based on information provided by the father, there is reason to believe the [minor] may be an Indian child. [The Department] shall therefore make further inquiry regarding the possible Indian status of the [minor]. Notice shall be provided as required by law, if there is a reason to know the [minor] is an Indian child.”

The Department’s June 2019 selection and implementation report recommended the court find the ICWA does not apply, terminate the parents’ reunification services, and set the matter for a section 366.26 hearing.

In an addendum report filed June 6, 2019, the Department set forth its further ICWA inquiry efforts regarding the minor’s potential Indian heritage. For example, on May 15, 2019, the social worker called the paternal grandfather, who stated he had not contacted any relatives but planned to speak to the paternal great-great-grandmother’s sister that day and report back to the social worker. Two days later, the paternal grandfather reported he located the paternal great-great-grandmother’s sister, who “knows many of the relatives in Colorado,” and planned to see her the following day to obtain more information, including the birthdates of the paternal great-great-grandmother or great-great-great-grandfather, who was part of the Apache tribe in Sonora, Mexico.

In the meantime, the social worker contacted the California Department of Social Services (CDSS) Office of Tribal Affairs and the BIA and reviewed the BIA’s list of

designated tribal agents to identify all Navajo, Apache, and Cherokee Tribes and their designated agents. The social worker contacted 12 identified tribes, four of which confirmed the minor was not an Indian child for purposes of the ICWA and the remainder of which had not responded as of the date of the report.

On June 17, 2019, father filed a petition pursuant to section 388 to change the court's May 15, 2019, order finding him to be the biological father of the minor and instead find him to be the minor's presumed father, vacate the selection and implementation hearing, and transition the minor to father's custody or, alternatively, to provide reunification services to father and set the matter for a six-month review hearing.

### ***Sections 388 and 366.26 Hearing***

On July 10, 2019, the court heard testimony on the issue of paternity and denied father's section 388 petition. The court terminated parental rights, finding there was "no reason to know that the [minor] is an Indian child" within the meaning of the ICWA and no further ICWA notice was required. Thereafter, the social worker testified that six additional tribes provided responses confirming the minor was not an Indian child and the remaining two tribes had not yet responded.<sup>3</sup>

Father timely appealed the court's July 10, 2019 orders.

## **II. DISCUSSION**

Father claims the juvenile court erred in finding the ICWA did not apply without first ensuring proper compliance with the ICWA inquiry and notification requirements.

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<sup>3</sup> On January 10, 2020, the Department filed a motion to augment the record (Cal. Rules of Court, rules 8.155 & 8.410) with the following post-termination ICWA-related documents: a September 27, 2019 progress report (not file-stamped by the juvenile court), a September 27, 2019 declaration of receipt of ICWA return receipt cards and/or tribal correspondence, and the juvenile court's minute order following an October 18, 2019 ICWA compliance hearing wherein the court reiterated its previous ICWA ruling. The motion is hereby denied.

### ***Development of ICWA Compliance Law***

In 1978, Congress enacted the ICWA in response to “ ‘rising concern in the mid-1970’s over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes.’ [Citation.]” (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7-8.) The purpose underlying the ICWA was “ ‘to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture . . . .’ (25 U.S.C. § 1902.)” (*Id.* at p. 8.)

“In 2006, our Legislature enacted provisions that affirm ICWA’s purposes (§ 224, subd. (a)) and mandate compliance with ICWA ‘[i]n all Indian child custody proceedings’ (§ 224, subd. (b)).” (*In re Isaiah W., supra*, 1 Cal.5th at p. 9.)

The ICWA notice requirements have long been triggered by a court’s “reason to know” a child may be an Indian child for purposes of the ICWA. (See 25 U.S.C. § 1912(a).) Although initially undefined under federal law, the phrase “reason to know” was defined by the California Legislature to include information provided by “a person having an interest in the child . . . *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.” (Former § 224.3, subd. (b)(1), italics added; Stats. 2006, ch. 838, § 32 (SB 678).) As demonstrated by case law at that time, little more than a “minimal showing” was required to trigger the statutory notice provisions. (See *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 258.)

Federal regulations governing court proceedings covered by the ICWA were amended, effective December 12, 2016, to provide minimum Federal standards to ensure

compliance with the ICWA. (25 C.F.R. § 23.101, et seq.) As relevant here, the federal regulations require that state courts, at the commencement of the involuntary child-custody proceeding, ask each participant “whether the participant *knows or has reason to know* that the child is an Indian child” and “instruct the parties to inform the court if they subsequently receive information that provides *reason to know* the child is an Indian child.” (25 C.F.R. § 23.107(a), italics added.)

The regulations explain that a court “has *reason to know* that a child involved in . . . [a] child-custody proceeding is an Indian child” under certain specified circumstances (25 C.F.R. § 23.107(c)(1)-(6), italics added), and further explain that, “[i]f there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an ‘Indian child,’ the court must: [¶] (1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is *reason to know* the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and [¶] (2) [t]reat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an ‘Indian child’ in this part.” (25 C.F.R. § 23.107(b)(1)-(2), italics added.)

Effective January 1, 2019, California Assembly Bill No. 3176 (2017-2018 Reg. Sess.) made substantial revisions to the Welfare and Institutions Code to conform California law to the requirements of the federal regulations governing proceedings covered by the ICWA. For example, section 224.2, subdivision (c) mirrors 25 C.F.R. § 23.107(a) and provides: “At the first appearance in court of each party, the court shall ask each participant present in the hearing whether the participant *knows or has reason to know* that the child is an Indian child. The court shall instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.” (§ 224.2, subd. (c), italics added; see 25 C.F.R. § 23.107(a).)

Section 224.2, subdivision (d) mirrors 25 C.F.R. § 23.107(c) and provides the court has “reason to know” a child involved in a proceeding is an Indian child under any of the following circumstances: “(1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child’s extended family informs the court that the child is an Indian child; [¶] (2) The residence or domicile of the child, the child’s parents, or Indian custodian is on a reservation or in an Alaska Native village; [¶] (3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child; [¶] (4) The child who is the subject of the proceeding gives the court reason to know that the child is an Indian child; [¶] (5) The court is informed that the child is or has been a ward of a tribal court; [¶] (6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.” (§ 224.2, subd. (d); see 25 C.F.R. § 23.107(c).)

Section 224.2, subdivision (g) similarly mirrors 25 C.F.R. § 23.107(b) by providing: “If there is *reason to know* the child is an *Indian child*, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member or whether a biological parent is a member and the child is eligible for membership.” (Italics added.)

In contrast to the “reason to know” requirements, California law also sets forth requirements when there is a “reason to believe” a child is an Indian child. Section 224.2, subdivision (e) provides: “If the court, social worker, or probation officer has *reason to believe* that an Indian child is involved in a proceeding, the court, social worker, or probation officer shall make further inquiry regarding the possible Indian

status of the child, and shall make that inquiry as soon as practicable. Further inquiry includes, but is not limited to, all of the following: [¶] (1) Interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.3[;<sup>4</sup>] [¶] (2) Contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member, or eligible for membership in, and contacting the tribes and any other person that may reasonably be expected to have information regarding the child's membership status or eligibility[;] [¶] (3) Contacting the tribe or tribes and any other person that may reasonably be expected to have information regarding the child's membership, citizenship status, or eligibility. Contact with a tribe shall, at a minimum, include telephone, facsimile, or electronic mail contact to each tribe's designated agent for receipt of notices under the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.). Contact with a tribe shall include sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case." (§ 224.2, subd. (e)(1)-(3), italics added.)

### ***Analysis***

The newly-revised California laws made effective on January 1, 2019, apply to father, who made his first appearance in the proceedings on March 27, 2019. Father was found to be the minor's biological father on May 1, 2019. From that point until the court terminated his parental rights on July 10, 2019, the only ICWA information father provided was that he may have Indian ancestry but was neither a member of a tribe nor

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<sup>4</sup> Section 224.3, subdivision (a)(5) includes the name, birth date and birthplace of the Indian child, if known; the name of the Indian tribe; and the names and other identifying information of the Indian child's biological parents, grandparents, and great-grandparents, if known.



could he identify a tribe, his grandparents “may have membership,” there was “possible Apache and Cherokee heritage” which was “[o]ut of Colorado,” and that the paternal grandfather’s claim that the family was part Navajo and part Apache was “fine.” The paternal aunt reported possible but unconfirmed Indian heritage and stated she did not think any member of her family was a member of a tribe.

Based on the initial inquiry by the court and the Department, there was at best a *reason to believe* the minor may be an Indian child, thus triggering the provisions of section 224.2, subdivision (e), which required the court and the Department to make further inquiry as soon as practicable. The Department conducted further inquiry of father and his extended family members. The paternal grandfather—the only family member with any information—reported the paternal great-great-grandmother was part Navajo and the paternal great-great-great-grandfather was part of the Apache Tribe in Sonora, Mexico; the paternal family had not been involved with the reservation for generations; and he believed some of the paternal family members used to live on, or were currently living on, reservations in Colorado and other states. He also reported he was in contact with the paternal great-great-grandmother’s sister, who knew many of the Colorado relatives, but refused to provide the relatives’ contact information to the Department.

With that limited information, and at the direction of the juvenile court, the Department contacted the CDSS and the BIA to obtain assistance in identifying the designated tribal agents for all federally-recognized Navajo, Apache, and Cherokee tribes. The Department reported, in a June 12, 2019 addendum report, that the social worker identified 12 federally-recognized tribes: the Navajo Nation, the Cherokee Nation, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians in Oklahoma, the Apache Tribe of Oklahoma (Kiowa), the Fort Sill Apache Tribe of Oklahoma, the Jicarilla Apache Nation, the Mescalero Apache Tribe, the San Carlos Apache Tribe, the Tonto Apache Tribe of Arizona, the White Mountain Apache Tribe,

and the Yavapai-Apache Nation. The report documented the social worker's contact with the 12 tribes by telephone, fax, e-mail, and/or mail, the name of the designated agent for each tribe, the dates of attempted contact with each designated agent (all between May 15 and June 4, 2019), and that each tribe was provided with the minor's "ICWA Family Tree." As of the date of the report, four of the tribes had confirmed the minor was not an Indian child. As of the July 10, 2019 hearing, six additional tribes had confirmed the minor was not an Indian child, and the two remaining tribes (the Navajo Nation and the White Mountain Apache Tribe) had acknowledged contact but had not yet provided a definitive response.

Based on the documentation provided by the Department, the juvenile court found the Department complied with the ICWA notice provisions, there was "no reason to know that the [minor] is an Indian child" within the meaning of the ICWA, and no further ICWA notice was required.

The Department's ICWA inquiry based on *reason to believe* the minor might be an Indian child met the requirements set forth in section 224.2, subdivision (e). Therefore, there was sufficient evidence to support the juvenile court's finding that there was no reason to know the minor was an Indian child and no further ICWA noticing was required.

Father contends the Department's ICWA declaration upon which the court relied failed to include information required by section 224.2, subdivision (e)(3), including contact information for the tribal agents with whom the Department made contact, the minor's "ICWA Family Tree" mentioned in the declaration, information regarding the minor's current status, return receipts from the Navajo Nation or the White Mountain Apache Tribe, and the actual responses from the tribes. He also takes issue with the fact that the ICWA declaration was not signed under penalty of perjury. The claims lack merit.

As a preliminary matter, section 224.2, subdivision (e) does not require that any extensive or particular formal documentation of ICWA inquiry be provided to the tribe. Subdivision (e)(3) of that section provides that contact with the tribe “shall include sharing information *identified by the tribe as necessary* for the tribe to make a membership or eligibility determination.” (Italics added.) Similarly, section 224.2, subdivision (e) does not require that the Department report its inquiry efforts to the juvenile court in the form of a declaration or in any particular form at all. The only guidance in that regard can be found by analogy to subdivision (g) of that section (applying specifically to circumstances where there is “reason to know”) which permits the court to confirm the Department’s due diligence “by way of a report, declaration, or testimony included in the record.” (§ 224.2, subd. (g).) Here, the Department provided evidence of its due diligence inquiry via a report and testimony at the July 10, 2019 hearing. Thus, father’s claim that the “declaration” was not signed under penalty of perjury fails.

In any event, the Department’s ICWA report contained evidence sufficient to support the juvenile court’s findings. Section 224.2, subdivision (e)(3) requires that further inquiry include: “Contacting the tribe or tribes and any other person that may reasonably be expected to have information regarding the child’s membership, citizenship status, or eligibility. Contact with a tribe shall, at a minimum, include telephone, facsimile, or electronic mail contact to each tribe’s designated agent for receipt of notices under the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.). Contact with a tribe shall include sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case.”

The Department’s report included evidence of interviews of father and his extended family members, contact with the BIA and CDSS to identify any federally-recognized Navajo, Apache, and Cherokee tribes in which the minor might be a member

or eligible for membership and, as required by subdivision (e)(3), contact with the identified tribes (by telephone, facsimile, e-mail, and regular mail) and sharing of information via the minor's ICWA family tree. (See § 224.2, subd. (e)(1)-(3).) It also included information regarding the tribes' responses, or lack thereof. In that regard, at the time of the juvenile court's July 10, 2019 ruling, 10 of the 12 tribes confirmed the minor was not an Indian child. As for the two remaining tribes, the Department reported it contacted the Navajo Nation on May 15 and 22, 2019, and June 4, 2019, spoke with a tribal representative by telephone, and faxed the ICWA inquiry twice but had yet to receive a determinative response. The Department further reported it contacted the White Mountain Apache Tribe on May 23 and 28, 2019, communicated by e-mail, and e-mailed and mailed the ICWA inquiry but had yet to receive a determinative response. Based thereon, the two tribes were given nearly two months within which to provide a determinative response to the Department's ICWA inquiry, a time period we find reasonable in the context of a dependency proceeding.

Father claims the juvenile court "knew or had reason to believe" the minor was an Indian child within the meaning of the ICWA based on information provided by father and the paternal grandfather, and the Department failed to send notices to the Navajo, Apache, and Cherokee Tribes as required. In the absence of such noticing, he argues, the court's conclusion that the minor was not an Indian child was error. We disagree.

Father conflates two separate and distinct provisions of section 224.2, namely the "reason to know" provisions found in section 224.2, subdivisions (c), (d), (f), (g), and (i) and the "reason to believe" provision found in section 224.2, subdivision (e). As discussed at length above, a "reason to believe" the minor is an Indian child triggers requirements less rigorous than does a "reason to know."

Here, the entirety of the information provided by father and the paternal grandfather was that father's family had possible Cherokee heritage and possible Navajo and Apache heritage linked to the paternal great-great-grandmother and the paternal

great-great-great-grandfather. The information did not meet the “reason to know” criteria set forth in section 224.2, subdivision (d). That is, no person having an interest in the minor (including the minor himself) had informed the court that the minor was an Indian child, there was no information to suggest the minor had at any time lived on a reservation or been a ward of a tribal court, and there was no indication either the minor or the parents possessed an identification card indicating membership or citizenship in an Indian tribe. The information provided by father and the paternal grandfather indicated the possibility that they had Indian heritage but did not rise to the level of “information indicating that the [minor] is an Indian child.” (§ 224.2, subd. (d)(3).)

At best, the information provided by father and the paternal grandfather gave the court a “reason to believe” the minor may be an Indian child, thus triggering the inquiry provisions of section 224.2, subdivision (e). The court established that fact at the May 15, 2019 hearing, during which the court first ordered the Department to contact the BIA and the CDSS, and contact the tribes by, at a minimum, telephone, facsimile, or electronic mail, as required by section 224.2, subdivision (e). Then, when father suggested there might be Cherokee heritage in addition to the previously-claimed Navajo and Apache heritage, the court ordered the Department to include Cherokee tribes in its ICWA inquiry. The court’s May 15, 2019 written order expressly stated there was “*no reason to know* the [minor] is an Indian child” (italics added) but, based on the new information provided by father, there was a “reason to believe the [minor] may be an Indian child.” The order directed the Department to make further ICWA inquiry and provide notice “*if there is a reason to know* the [minor] is an Indian child.” (Italics added.) As the court later determined, there was no reason to know.

Father relies on a number of cases which he claims support his argument that ICWA notice to the tribes was “mandatory.” All but one of the cases upon which he relies—*In re A.W.* (2019) 38 Cal.App.5th 655—predate the 2019 amendments to the California statutes distinguishing between “reason to believe” and “reason to know.” In

*A.W.*, the parents argued the agency and the juvenile court failed to comply with the ICWA procedures and erroneously terminated their parental rights without prior notice to the relevant Indian tribe. (*Id.* at p. 663.) This court rejected the agency’s argument that the newly-revised language of section 224.2 required notice “only when the court knows or has reason to know the child *is definitively* a member (or knows a parent *is definitively* a member *and* the child is eligible for membership).” (*A.W.*, at p. 665.) In doing so, this court applied the 2016 law in effect at the time the juvenile court conducted its ICWA compliance hearing and did not analyze the issue under the 2019 revised statute applicable here. (*Id.* at p. 662.) *A.W.* is inapposite here.

The Department satisfied the criteria set forth in section 224.2, subdivision (e) and the juvenile court’s finding that, based on the evidence provided, there was no reason to know the minor was an Indian child and no further noticing was required, and its determination that the ICWA did not apply were supported by substantial evidence.

**III. DISPOSITION**

The juvenile court's orders are affirmed.

*/S/*

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RENNER, J.

We concur:

*/S/*

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BUTZ, Acting P. J.

*/S/*

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MURRAY, J.

Filed 6/5/20

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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In re M.W., a Person Coming Under the Juvenile  
Court Law.

C089997

SACRAMENTO COUNTY DEPARTMENT OF  
CHILD, FAMILY, AND ADULT SERVICES,

(Super. Ct. No. JD239507)

Plaintiff and Respondent,

ORDER CERTIFYING  
OPINION FOR  
PUBLICATION

v.

A.C.,

[NO CHANGE IN  
JUDGMENT]

Defendant and Appellant.

THE COURT:

The opinion in the above-entitled matter filed May 7, 2020, was not certified for publication in the Official Reports. For good cause it appears now that the opinion should be published in the Official Reports and it is so ordered. There is no change in judgment.



EDITORIAL LISTING

APPEAL from a judgment of the Superior Court of Sacramento County, Shama H. Mesiwala, Judge. Affirmed.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and Appellant.

Lisa A. Travis, County Counsel, Nicole L. Roman, Deputy County Counsel, for Plaintiff and Respondent.

BY THE COURT:

/S/

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BUTZ, Acting P. J.

/S/

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MURRAY, J.

/S/

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RENNER, J.

## INDIAN ANCESTRY QUESTIONNAIRE

**Name** (person completing form): \_\_\_\_\_ **Phone #:** \_\_\_\_\_

**Petition number(s) of children:** \_\_\_\_\_

The information requested below is necessary to determine whether the Indian Child Welfare Act (ICWA) applies to this case. The ICWA provides legal protections designed to prevent the breakup of Indian families, and may provide important rights and benefits to the Indian parent(s) and their child/ren. Please complete as much of the requested information to assist the family in determining whether the ICWA applies to the case.

1. Name of Person Interviewed: \_\_\_\_\_

2. Relationship to child:  Parent  Indian Custodian  Guardian  Other: \_\_\_\_\_

3. a)  The mother and/or father is or may be a member of or eligible for membership in a federally recognized Indian tribe (*Circle one of the underlined*):

Name of tribe(s) (name each): \_\_\_\_\_

State/Location of tribe(s): \_\_\_\_\_

b)  The child/ren is/are or may be a member(s) of or eligible for membership in, a federally recognized Indian tribe:

Name, (including middle names), date and place of birth of each child this information applies

to: \_\_\_\_\_

Name of tribe(s) (name each): \_\_\_\_\_

State/Location of tribe(s): \_\_\_\_\_

c)  One or more of the grandparents, great-grandparents or other lineal ancestor is or was a member of a federally recognized tribe:

Name of tribe(s) (name each): \_\_\_\_\_

State/Location of tribe(s): \_\_\_\_\_

Name and relationship of ancestor(s): \_\_\_\_\_

d)  The child's mother and/or father is a resident of or domiciled on a reservation or an Alaska Native Village (*Circle one of the underlined*)

List name or reservation or Alaska Native Village, if known: \_\_\_\_\_

e)  The child/ren is/are a resident(s) of or domiciled on a reservation or an Alaska Native Village.

Name, (including middle names) of each child this information applies

to: \_\_\_\_\_

f)  The child/ren is or has been a ward of a tribal court:

Name, (including middle names) of each child this information applies

to: \_\_\_\_\_

g)  Either parent or the child possess an Indian identification card indicating membership or citizenship in an Indian tribe.

Name of tribe(s) (name each): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Describe any known Indian ancestry of the child/ren by completing the attached family tree, **filling in as much information as possible**. Indicate on the family tree who is an enrolled member or eligible for enrollment and include his/her enrollment number. If more space is needed, use the box at the bottom of the form.

5. Have any members of your family ever participated in federal programs/services, such as the Title VII Indian Education Program or Tribal TANF? If yes, name of family member, type of service(s), where and when services(s) were received.

\_\_\_\_\_  
\_\_\_\_\_

6.  Has parent or any family member received medical treatment at an Indian health clinic or public health services hospital? If yes, name of family member, type of treatment, date and location where treated.

\_\_\_\_\_  
\_\_\_\_\_

7.  Has parent or any family member attended an Indian school? If so, name the family member, Indian school, dates attended, and location of school.

\_\_\_\_\_  
\_\_\_\_\_

8.  Has parent or any family member lived on federal trust land, or reservation? If yes, specify the name and address of location, date, and name of person.

\_\_\_\_\_  
\_\_\_\_\_

9. If the parent claiming Indian status is the child's father, has paternity been informally acknowledged or formally established? If formally established, has there been biological testing, a paternity judgment, a signed Declaration of Paternity, etc.?

\_\_\_\_\_  
\_\_\_\_\_

10. Please provide any additional information that would help in determining if the child/ren is/may be an Indian child/ren, including names and contact information for family members who have additional family and tribal information.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Indian Ancestry Family Tree

DOB = Date of Birth  
 POB = Place of Birth  
 POD = Place of Death  
 DOD = Date of Death

**INSTRUCTIONS**

Please add dates and places of birth, and places and dates of death (if applicable/known), as well as full names, including middle, maiden names, aliases and nicknames.

**For tribes, clarify the specific band and location** (eg. Cherokee, Keetoowah, Oklahoma).

<b>Child(ren):</b>			
DOB:			
POB:			
Enrolled?			
Tribe:			

<b>Maternal Grandfather:</b>		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		
Former Address:		
Telephone Number:		→

<b>Maternal Grandmother:</b>		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		→
Former Address:		
Telephone Number:		

<b>Maternal Great Grandfather:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Maternal Great Grandmother:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Maternal Great Grandfather:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Maternal Great Grandmother:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	

<b>MOTHER</b>	
Name:	
AKA:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
Email address:	→

<b>Other</b> (i.e. direct lineal ancestors)
---

# Indian Ancestry Family Tree

149

DOB = Date of Birth  
 POB = Place of Birth  
 POD = Place of Death  
 DOD = Date of Death

## INSTRUCTIONS

Please add dates and places of birth, and places and dates of death (if applicable/known), as well as full names, including middle, maiden names, aliases, and nicknames.

For tribes, clarify the specific band and location.

(eg. Cherokee, Keetoowah, Oklahoma).

FATHER	
Name:	
AKA:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
Email address:	

<b>Other</b> (i.e. direct lineal ancestors)
---

<b>Child(ren):</b>			
DOB:			
POB:			
Enrolled?			
Tribe:			

<b>Paternal Grandfather:</b>		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		
Former Address:		
Telephone Number:		

<b>Paternal Grandmother:</b>		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		
Former Address:		
Telephone Number:		

<b>Paternal Great Grandfather:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Paternal Great Grandmother:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Paternal Great Grandfather:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
<b>Paternal Great Grandmother:</b>	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	

**ICWA Inquiry/Further Inquiry:**

The following efforts were made to inquire/further inquire as to the child's possible Indian status, if individuals were available:

- Interviewed the child's mother
- Interviewed the child's father
- Interviewed the child's guardian (if applicable)
- Interviewed the Indian Custodian (if applicable)
- Interviewed Relatives/Extended Family Members/NREFMs
- Interviewed the child/ren.

**INFORMATION ABOUT PERSONS INTERVIEWED AND INITIAL INQUIRY (WIC 224.2(a)-(b))**

*For each person interviewed, include the following paragraph explaining the information he/she provided regarding the child/ren's Indian status.*

On 00/00/0000, social worker [specify name], interviewed [specify name(s)], [specify relationship], who stated the child is/is not/may be an Indian child and the child and/or a parent's primary residence is/is not on an Indian reservation or Alaska Native Village.

**FURTHER INQUIRY, ADDITIONAL FAMILY HISTORY INFORMATION PROVIDED BY PERSONS INTERVIEWED (WIC 224.2(e))**

*Gather the information for each family member below and identify the person(s) who provided the information.*

a. Child's biological mother

*Identify who provided the information in these sections, e.g. mother.*

Source of Information and Date Information Provided: mother/father/guardian/name and relationship of extended family member

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

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

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

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

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

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

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

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

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:  
 Current address:  
 Former address:  
 Birth date and place:  
 Tribal, band, or Alaska Native village affiliation, including name and location:  
 Membership or enrollment number, if known:  
 If deceased, date and place of death:  
 Telephone Number:

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

Source of Information and Date Information Provided:

Name:  
 Any maiden or married name, former names, or aliases:  
 Current address:  
 Former address:  
 Birth date and place:  
 Tribal, band, or Alaska Native village affiliation, including name and location:  
 Membership or enrollment number, if known:  
 If deceased, date and place of death:  
 Telephone Number:

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

Source of Information and Date Information Provided:

Name:  
 Any maiden or married name, former names, or aliases:  
 Current address:  
 Former address:  
 Birth date and place:  
 Tribal, band, or Alaska Native village affiliation, including name and location:  
 Membership or enrollment number, if known:  
 If deceased, date and place of death:  
 Telephone Number:

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

Source of Information and Date Information Provided:

Name:  
 Any maiden or married name, former names, or aliases:  
 Current address:  
 Former address:  
 Birth date and place:  
 Tribal, band, or Alaska Native village affiliation, including name and location:



Membership or enrollment number, if known:  
 If deceased, date and place of death:  
 Telephone Number:

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

Source of Information and Date Information Provided:

Name:  
 Any maiden or married name, former names, or aliases:  
 Current address:  
 Former address:  
 Birth date and place:  
 Tribal, band, or Alaska Native village affiliation, including name and location:  
 Membership or enrollment number, if known:  
 If deceased, date and place of death:  
 Telephone Number:

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

Source of Information and Date Information Provided:

Name:  
 Any maiden or married name, former names, or aliases:  
 Current address:  
 Former address:  
 Birth date and place:  
 Tribal, band, or Alaska Native village affiliation, including name and location:  
 Membership or enrollment number, if known:  
 If deceased, date and place of death:  
 Telephone Number:

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

Source of Information and Date Information Provided:

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

If deceased, date and place of death:  
Telephone Number:

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

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

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

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

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

Source of Information and Date Information Provided:

Name:

Any maiden or married name, former names, or aliases:

Current address:

Former address:

Birth date and place:

Tribal, band, or Alaska Native village affiliation, including name and location:

Membership or enrollment number, if known:

If deceased, date and place of death:

Telephone Number:

The following efforts were made to further inquire as to the child's possible Indian status:

- Utilized the BIA and its resources for assistance in identifying the names and contact information of the tribe(s) in which the child may be a member or eligible for membership. (WIC 224.2(e))

On *[insert date]*, the undersigned reviewed the BIA List of Designated Tribal Agents located in the Federal Register, Vol. 85, No. 84 (April 30, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-04-30/pdf/2020-09155.pdf> which identified the following Tribes and their Designated Agents:

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

**AND/OR**

- The undersigned was unable to obtain accurate contact information for the tribe(s) from the Federal Register and the Department's internal tribal contact information resource document. On *[insert date]*, contacted the BIA (Pacific Regional Office) at (916) 978-6000 to obtain assistance in identifying the contact information for the tribe. The BIA representative *[insert name]* provided the following contact information for the tribe(s):

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

- Contacted the CDSS' Office of Tribal Affairs for assistance in identifying the names and contact information of the tribe(s) in which the child may be a member or eligible for membership by e-mailing [ICWAinquiry@dss.ca.gov](mailto:ICWAinquiry@dss.ca.gov). (WIC 224.2(e))

The undersigned was unable to obtain accurate contact information for the tribe(s) after utilizing the BIA and its resources, on *[insert date]*, the undersigned e-mailed the CDSS Office of Tribal Affairs (OTA) for assistance [TribalAffairs@dss.ca.gov](mailto:TribalAffairs@dss.ca.gov). In response, CDSS OTA provided the following contact information for the tribe(s):

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

Tribe: Agent: Phone No:

These materials are in draft form and subject to change.

The following efforts were made to further inquire as to the child's possible Indian status:

- Contacted by telephone, fax, email, or mail, the tribe(s) or designated agent of the tribe(s) and contact with any other person that may reasonably be expected to have information regarding the child's membership or eligibility status. (WIC 224.2(e))

Tribe: *[Insert Name]* Designated Agent: *[Insert Name]*

Dates of Attempted Contact: *[insert date], [insert date], [insert date]*

Means of Attempted Contacts:  Telephone  E-mail  Fax

**Information Provided** by Social Worker: *[Include what information the social worker provided the tribal representative to determine whether the child is an Indian child – e.g. family tree]*

**Result of Tribal Contact:** *[Include information provided by tribe – e.g. “The tribal representative advised that family history/family tree information is required and the undersigned provided the family tree information by e-mail to the tribe” or “The tribal representative responded by e-mail/phone that the child was not eligible for membership in the tribe.”]*

Tribe: *[Insert Name]* Designated Agent: *[Insert Name]*

Dates of Attempted Contact: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Means of Attempted Contacts:  Telephone  E-mail  Fax

**Information Provided** by Social Worker: *[Include what information the social worker provided the tribal representative to determine whether the child is an Indian child – e.g. family tree]*

**Result of Tribal Contact:** *Include information provided by tribe – e.g. “The tribal representative advised that family history/family tree information is required and the undersigned provided the family tree information by e-mail to the tribe” or “The tribal representative responded by e-mail/phone that the child was not eligible for membership in the tribe.”*

Tribe: *[Insert Name]* Designated Agent: *[Insert Name]*

Dates of Attempted Contact: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Means of Attempted Contacts:  Telephone  E-mail  Fax

**Information Provided** by Social Worker: *[Include what information the social worker provided the tribal representative to determine whether the child is an Indian child – e.g. family tree]*

**Result of Tribal Contact:** *Include information provided by tribe – e.g. “The tribal representative advised that family history/family tree information is required and the undersigned provided the family tree information by e-mail to the tribe” or “The tribal representative responded by e-mail/phone that the child was not eligible for membership in the tribe.”]*

**ICWA Formal Notice:**

The Department has complied with the ICWA notice provisions contained in California

Rules of Court, Rule 5.480 et seq.

Name of Biological Parent Who is Member of Indian Child’s Tribe (25 USC Section 1903):

Name of Biological Parent Who May be Eligible for Membership in Indian Child’s Tribe:

Name of Indian Child’s Tribe (25 USC Section 1903 Subd. (5)):

Date Indian Child’s Tribe Noticed:

How Notice was Sent to Indian Child’s Tribe: (Certified Mail, return receipt requested)

Response from Indian Child’s Tribe: