



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)).¹
- 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

¹ 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 §366.6 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.

Family Tree or Pedigree Chart

Completed by:

Agency/court:

GREAT-GRANDFATHER	GREAT-GRANDMOTHER	GREAT-GRANDFATHER	GREAT-GRANDMOTHER	GREAT-GRANDFATHER	GREAT-GRANDMOTHER	GREAT-GRANDFATHER	GREAT-GRANDMOTHER
PATERNAL GRANDFATHER		PATERNAL GRANDMOTHER		MATERNAL GRANDFATHER		MATERNAL GRANDMOTHER	
FATHER				MOTHER			
CHILD'S NAME							
{ Court Case No. }							

NOTES



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

ICWA Information Sheet - ICWA Inquiry (DEPENDENCY)

1. Initial Inquiry

In every dependency case, the Court and child welfare agency share an affirmative and continuing duty to inquire whether the child is or may be an Indian child. (WIC 224.3(a)). ICWA inquiry can be thought of as having two stages: 1) Initial inquiry which is done in each and every case in which a dependency petition is filed or may be filed, and 2) Further inquiry which is required in those cases in which initial inquiry gives “reason to know” that an Indian child may be involved.

Initial inquiry is fairly simple. It consists of asking (1) the child (if old enough), (2) the parents, (3) guardians, (4) custodians whether the child is or may be an Indian child. (CRC 5.481 (a)(1)), and requiring each party to state on the record at the first hearing whether the participant knows or has reason to know that the child is an Indian child and instructing them to inform the court if they subsequently receive information that provides reason to know the child is an Indian child. (25 CFR §23.2) Although not explicitly required by statute, it is a good idea to ask about Indian ancestry from all available family members. This helps lessen the chance that ICWA information could emerge late in the case.

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

2. Document Initial Inquiry in Case File

The initial ICWA inquiry must be documented in the juvenile court case file in a number of ways: (1) the appropriate box should be checked on the petition; (2) a completed judicial council form ICWA-010(A) *Indian Child Inquiry Attachment* should either be attached to the

petition, or if not available when the petition is filed, completed and submitted to the court separately; (3) judicial council form ICWA-020 *Parental Notification of Indian Status* for each of the child's parents, completed and signed by the parents should be in the court file. If one or both parents are not available to complete and sign the ICWA-020, the file should clearly document this. If one parent is not available, the other parent and other available family members should be asked about the missing parent's possible Indian ancestry and this noted in the court file.

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

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

According to WIC 224.3, information “suggesting” that the child is or may be an Indian child is sufficient to give you “reason to know the child is an Indian child”. This information can come from any source. It can come as the result of the initial inquiry conducted by the agency and the court, or it can come from a relative, other individual, caretaker or agency interested in the child. Where ever the information comes from, a “reason to know” triggers other requirements.

Federal regulations require that when you have reason to know you must confirm by way of evidence on the record that the agency or other party has used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership; and treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an “Indian child”.¹

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

¹ 25 C.F.R. §23.107 (b).

Caution – per WIC 224.3(c) the duty of further inquiry falls to the court or social worker. The court can order the parties to cooperate with ICWA inquiry, but cannot shift the duty to complete ICWA inquiry to another party other than the social worker.²

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

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

4. Required Extent of Inquiry

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

5. Document Further Inquiry in the Court file

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

6. Judicial Findings

Once ICWA has been raised as a possible issue by a parent or other interest person saying the child may have Indian ancestry, it is important for the Court to ensure that the matter is properly resolved and the correct judicial findings are made so that the matter does not simply linger.

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

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

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

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

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

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

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

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

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

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

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

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

Sometimes you will know that ICWA applies even before notice has been sent and a response received from a tribe. Such cases include situations where the child's tribal enrollment card³ is produced or the court has previously found ICWA applicable to the child, or where as a result of the agency or other parties interactions with the tribe the child's status has been verified. In these cases notice must be sent to the child's tribe.

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

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



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

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

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

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

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

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

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

- find that ICWA may apply;

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

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

- require the agency or other responsible party to provide evidence by way of report, declaration, or testimony that they have used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership). Such due diligence should include at a minimum calling and emailing the designated agents for service of ICWA notice published in the federal register; AND
- order the agency to complete “further inquiry” as soon as possible.⁴

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

Judicial ICWA (Indian Child Welfare Act) Checklist

Step 3: Further Inquiry

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

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

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

⁴ NOTE – per WIC 224.3 (c) the duty of further inquiry falls on the social worker or probation officer. In a family law or probate code case, it is the petitioner who is primarily responsible for inquiry. You may not shift this burden of further inquiry to another party to the case. See *In re. A.G.* (2012) 204 Cal.App.4th 1390 and *Guardianship of the Person of D.W.* (2013) 221 Cal.App.4th 242.

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

⁶ See *In re. A.G.* (2012) 204 Cal.App.4th 1390 and *Guardianship of the Person of D.W.* (2013) 221 Cal.App.4th 242.

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

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



Social Service Departments

Requirements — Indian Child Welfare Act, Federal ICWA Regulations, AB 1325 & AB 3176*

I. Investigation/Intake Requirements

- A. *Initial inquiry*: When the agency has first contact concerning any child, including when a party reports child abuse or neglect or when the child is placed into the temporary custody of the agency under WIC 306 or WIC 307, the social worker must ask the child, parents, guardians, Indian custodians, relatives, and the party reporting child abuse or neglect whether the child may be an Indian child (a member of a tribe or eligible for membership and the child of a member of a tribe) and where the child, parents and Indian custodian are domiciled. (WIC §224.2 (a) & (b)) Do not assume a child may or may not be an Indian child based on appearance, family name, or generalizations. This inquiry must be done in every case. The precise questions that must be asked and the documentation of inquiry that must be in each case file are set out in CDSS guidance. Inquiry is required in all cases. The agency has an affirmative and continuing duty of ICWA inquiry throughout the life of a case.
- B. *Further inquiry*: If inquiry gives “reason to believe” that the child may be an Indian child, further inquiry is required. (WIC §224.2(e)) Further inquiry requires: (1) interviewing the parents, Indian custodian and extended family members to gather information required by WIC §224.3, including ancestry information back to the child’s great-grandparents, and other lineal ancestors identified as important to the child’s Indian status; (2) contacting the Bureau of Indian Affairs (BIA) and the California Department of Social Services (CDSS) for assistance identifying federally recognized tribes the child may be affiliated with based on the information gathered, and contact information for those tribes if the agency is not able to identify and contact the tribes without assistance; and (3) contacting the tribe(s) the child may be affiliated with by telephone, facsimile and/or email and sharing all available information identified by the tribe(s) as necessary to make a membership or eligibility determination.
- C. *When do I have “reason to believe”?* You have “reason to believe” when someone tells you they think the child or parents have Indian ancestry connected to a particular tribe, even if they do not know whether the parents or child are members or eligible for membership in a tribe.
- D. *Document inquiry thoroughly in the case file and on Juvenile Dependency Petition (form JV-100 or form JV-110) and Indian Child Inquiry Attachment (form ICWA-010(A))*:
1. Item 2 on JV-100, and JV-110 requires you to have conducted an initial ICWA inquiry and further inquiry if warranted.
 2. You are responsible for documenting your investigation on ICWA-010(A). If the child is an Indian child, you and the court will need to take specific steps to prevent the breakup of the child’s Indian family.
 3. Document in the ICWA-010(A) or in the court report, everyone you asked about Indian status and what their responses were. If you have “reason to believe” also document all efforts to interview extended family members, all contacts with the BIA & CDSS and all tribal contacts.
 4. You are responsible for ensuring that both parents and the Indian custodian or guardian, if any, complete and return *Parental Notification of Indian Status* (form ICWA-020). If the parents are not available, provide evidence to the court of all efforts you have made to have the parent(s) complete the ICWA-020 form.
- E. *When do I have “reason to know”?* Following initial inquiry and further inquiry you have “reason to know the child is an Indian child” if:
1. Anyone with an interest in the child provides you with information indicating that the child is an Indian child;

*All citations in this chart refer to the Indian Child Welfare Act (25 U.S.C. 1901 et seq. or “ICWA”), federal regulations implementing ICWA (25 C.F.R. Part 23), California Welf. & Inst. Code (“WIC”) and California Rules of Court, (“CRC”). Citations are to law current as of January 1, 2020.

2. If the child, the child's parents, or an Indian custodian reside or are domiciled on a reservation or in an Alaska Native Village;
3. The child is or ever has been under the jurisdiction of a tribal court; or
4. The child or either parent has an identification card or other document indicating membership in an Indian tribe. (WIC, § 224.2(d))

F. *What happens when I have "reason to know"?* If you have reason to know the child is an Indian child, you must:

1. Use due diligence to work with all tribes the child may be a member of or eligible for membership in to verify the child's Indian status. (WIC § 224.2 (g));
2. If there is reason to believe that the child is under the jurisdiction of a tribal court or resides or is domiciled on lands of a tribe that exercises exclusive jurisdiction over child custody proceedings you must contact the tribe by the next working day to make arrangements, as necessary, to transfer the child to the jurisdiction of the tribe. You must transfer custody of the child to the tribe within 24 hours of the tribe's confirmation the child is subject to exclusive tribal jurisdiction. (WIC §306(d) If you are unable to confirm tribal jurisdiction or are unable to transfer custody of the child to the tribe, you must proceed in state court and inform the court at the first hearing that the child may be subject to tribal jurisdiction. If confirmation is then received from the tribe, you must move to dismiss the petition.
3. Provide the tribe(s) with notice on the ICWA-030 form for all hearings that could result in foster care placement, termination of parental rights, preadoptive placement or adoptive placement of the child. (WIC §§224.2(f) & 224.3(b));
4. Provide active efforts to prevent removal, unless emergency removal is necessary to prevent imminent physical damage or harm to the child. (WIC §306(f)(4)); and
5. Comply with ICWA placement preferences if there is any removal, including an emergency removal, of the child from the custody of the parents or Indian custodian. (WIC §361.31(b)).

G. *Document active efforts:* If you know or have reason to know the child is an Indian child from initial contact, you must find resources and services that are culturally specific to the Indian child's family and directed at the issues the family is experiencing. You must actively pursue identification of the child's tribe and work with the child's tribe and extended family in developing these services. You must assist the parents in overcoming any barriers to accessing services. These resources and services are the *active efforts* that you must document to show that you are actively trying to prevent the breakup of the child's Indian family. Just as you would document *reasonable efforts* in non-ICWA cases, you must also document these active efforts thoroughly in the case file and in the court report before the child can be removed from his or her parent or Indian custodian and, in the event the family does not reunify, before parental rights can be terminated. You can find resources to help fulfill the active efforts requirement at <http://www.courts.ca.gov/5807.htm> . (ICWA § 1912(d); WIC §§224.1(f); 361.7; 727.4(d)(5)(D); CRC 5.485(c).)

II. ICWA Notice Requirements

- A. If you know or have reason to know the child is an Indian child, you must send a *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the child's parents or guardians, Indian custodian (if any), tribe(s) with which the child may be affiliated; and the Sacramento Office of the BIA; or the Secretary of the Interior for every hearing that may result in foster care placement, termination of parental rights, preadoptive placement or adoptive placement.
- B. *What to send:* Use mandatory form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*, including attachments and a copy of the child's birth certificate where available, the petition and the report prepared for the hearing.
- C. *Where and whom to send formal ICWA notice:* ICWA notice must be sent to the child's parents, including adoptive parents, guardian, Indian custodian (if any), the child's tribe or potential tribe(s), and either the Sacramento Area Director of the BIA if you do not know the child's tribe or the Secretary of the Interior if you do know (see F below).
- D. *How to send notice:* Notice must be sent via registered/certified mail, return receipt requested. If a tribe intervenes in the case, you may thereafter send notice to it in the same manner as to other parties.

E. *Where to send tribal notice:* When sending notices to the child's tribe, they must be addressed to the tribal chairperson or other tribal representative designated for receipt of ICWA notice. The list of designated agents for service of ICWA notice may be found at: <https://www.bia.gov/bia/ois/dhs/icwa>. Send notice to the child's tribe, or to all tribes of which the child may be a member or eligible for membership until the court determines which tribe is the child's tribe, after which notice need be sent only to the tribe determined to be the Indian child's tribe. (WIC, §§ 224.2, 224.3; CRC 5.481(b).)

F. If you know the child's tribe (i.e., child is an enrolled member), notice does not need to go to other tribes, and you do not need to send notice to the regional BIA office.

G. *Purpose of notice:* The purpose of notice is to let the tribe know of the involuntary child custody proceeding potentially involving one of its children and to allow it to investigate to determine whether the child is a tribal member or eligible for membership and whether or not to participate in the proceedings. Therefore, it is important that the information you provide is complete and accurate. If it is not, your notice may be held to be inadequate. (ICWA § 1912(a); WIC, § 224.3; CRC 5.481(c).)

H. *How to prove notice:* File with the court copies of all notices, with the certified mail receipts, any return receipts, and all responses from a tribe or the BIA.

I. *Notices for hearings other than those listed in A.:* Once a child's tribe has been identified, the tribe is entitled to notices of all hearings not listed in A. above in the same manner and to the same extent as all other parties.

NOTE: For notices sent on the ICWA-030 by registered/certified mail, return receipt requested, it is not sufficient for you to state on the report that notice was sent. The green return receipt must be in the court file, with a copy in the social worker's file.

III. Emergency Removal/Detention Requirements for Indian Child (ICWA §§ 1912(d), 1915 (b), 1922; 25 C.F.R. §§23.2 & 23.113; WIC §§ 224.1; 319 (b), (d), (e) & (i); 361.31, 361.7, 636(c)(2); CRC 5.484(b) & (c).)

A. If it is known or there is reason to know the child is an Indian child, removal from parental custody without full compliance with the procedural and substantive requirements of ICWA is only authorized if there is proof that such removal is necessary to prevent imminent physical damage or harm to the child. (25 U.S.C. § 1922) A detention hearing under WIC 319 is deemed an "emergency proceeding" if it is known or there is reason to know the child is an Indian child. (WIC § 224.1(l))

B. The emergency removal or detention hearing may not be continued beyond 30 days unless the court makes specific findings under WIC §319(e)(2)(A)-(C). (25 C.F.R. §23.113; WIC §319(e)(2)) Any party may request an ex parte hearing prior to the dispositional hearing to seek return of the child. (WIC § 319.4) Emergency removals should generally not last longer than 30 days. The dispositional hearing must be completed within 30 days after the detention hearing unless the court finds that exceptional circumstances exist. The absence of a qualified expert witness does not, by itself, constitute exceptional circumstances. (WIC § 352 (b))

C. *Report Requirements:* Provide documentation to support your inquiry concerning possible Indian status and results of inquiry. If that inquiry gave you "reason to believe" or "reason to know" the child is or may be an Indian child you must submit evidence of your further inquiry and due diligence to determine the child's status in accordance with WIC 224.2 (e) & (g). Address all of the requirements of WIC 319(b)(1)-(9);

D. Provide documentation to support the required court findings regarding reasonable efforts and active efforts to prevent removal.

E. Provide documentation concerning consultation with the tribe concerning placement and how the placement fits within the ICWA placement preferences.

NOTE – the emergency removal/detention of an Indian child generally cannot last for more than 30 days. This means that you must prepare to get to disposition within 30 days of the detention hearing unless exceptional circumstances justify detention beyond that time. The child's tribe is a required member of the Child and Family Team (CFT). (Welf. & Inst. Code § 16501(a)(4)) Within the 30 day timeframe, you must convening a CFT to advise on development of the case plan, and identify a qualified expert witness.

IV. Jurisdiction Report/Hearing Requirements for Indian Child

- A. Provide documentation to support your ongoing efforts to determine the child's tribal membership or eligibility status and the results of those efforts.
- B. Provide documentation to support the required court findings regarding reasonable efforts and active efforts to prevent removal.
- C. Provide notice in accordance with section II above.

V. Disposition Report Requirements If an Indian Child Is Removed from Parental Custody

- A. Document any further inquiry efforts you have made to determine the child's Indian and tribal membership status by completing and attaching ICWA-010(A) to the disposition report.
- B. In collaboration with the child's tribe, prepare a case plan that includes resources and services that are remedial, rehabilitative, and culturally specific to the Indian child's family and are designed to prevent the breakup of the Indian family. (ICWA § 1912(d); WIC, § 361.7; CRC 5.484(c)). In preparing this case plan you must solicit and integrate the input of the child's identified Indian tribe. (CRC 5.690(c))
- C. Discuss with the child's identified Indian tribe whether tribal customary adoption as defined in section 366.24 is an appropriate permanent plan for the child if reunification is unsuccessful and include the contents of this discussion in your report. (WIC § 358.1; 361.5(g)(1)(G))
- D. Comply with ICWA notice requirements discussed in section II above.
- E. *Timing:* Generally, the "emergency removal" or detention of an Indian child cannot last more than 30 days from the detention hearing without getting to a hearing where the full substantive protections of ICWA are applied. (WIC §352 (b)) No hearing can be held until 10 days after receipt of notice by the tribe and others entitled to ICWA notice. The parents, Indian custodian (if any), and tribe are entitled to an additional 20 days to prepare for the hearing on request. (ICWA § 1912 (a); WIC, § 224.2(d); CRC 5.483(a).)
- F. If you know the child's tribe, you should consult with the tribe in developing the case plan and determining what services are appropriate for the parents and the child, and in finding an appropriate placement for the child.
- G. Obtain a qualified expert witness (QEW) meeting the requirements of section VI(B) below to testify at the hearing.
- H. In consultation with the child's tribe, make efforts to obtain a placement that complies with the ICWA placement preferences set out in section VI(D) and (E) below and document those efforts in your dispositional report.
- I. Document in the report your active efforts and reasonable efforts and make recommended legal findings for the court to adopt. (ICWA § 1912(d); WIC, § 361.7.)
- J. Ensure that you have all the evidence necessary to support the disposition that you are recommending. In particular ensure that any foster-care placement recommendation complies with the requirements for ICWA foster placement set out in section VI below.

VI. Foster Placement Requirements

- A. *ICWA preferences:* The foster-care placement of an Indian child must comply with the ICWA placement preferences and must meet the heightened ICWA evidentiary standards.
 - B. *Evidentiary standard:* Provide proof by clear and convincing evidence, including the testimony of at least one qualified expert witness (QEW) that, taking into account the prevailing social and cultural standards of the child's tribe, continued custody of the child by the parent, or Indian custodian is likely to result in serious emotional or physical damage to the child. (ICWA § 1912(e); WIC, §§ 361, 361.31, 361.7(c); CRC 5.485(a).)
 - C. *Who can serve as QEW?* A person knowledgeable in prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child-rearing practices. In descending order this includes a knowledgeable person who is designated by the child's tribe, a member of the child's tribe, an expert with substantial experience in delivery of child and family services to Indians (e.g., social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, historian, or elder). (WIC § 224.6)
- NOTE: An employee of your social services department cannot serve as a QEW. (ICWA § 1912 (e); WIC, § 224.6; CRC 5.485(a).)

- D. *Placement preferences*: As with any child, the placement should be the least restrictive setting that most approximates a family and in which the child's special needs, if any, may be met. Unless the child's tribe has by resolution specified a different preference, preference must be given in order of priority to placement with (i) a member of the Indian child's extended family; (ii) a foster home licensed, approved, or specified by the Indian child's tribe; (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (iv) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs. If no placement is available that meets these preferences, efforts must be made to place the child with a family committed to preserving the child's family ties and tribal relations. (ICWA § 1915(b); WIC, § 361.31; CRC 5.485(b).)
- E. *Consultation with tribe*: When you know the child's tribe, you must consult with the tribe and make use of tribal services when formulating your placement recommendation. (WIC § 361.31(g))
- F. *Documentation of efforts regarding placement*: The court must make a finding that the placement accords with ICWA or that there is good cause to depart from the placement preferences. You must document in your report what efforts were made to find a placement that meets the preferences of ICWA. These efforts would include contacts with members of the child's extended family, contacts with the child's tribe seeking input and resources for placement, and contacts with other relevant Indian organizations (see I(E) for resources). These efforts should be made and documented each time there is a change in the Indian child's placement. (ICWA § 1916(b); WIC, § 361.31; CRC 5.482(f).)

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

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

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

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

permanent plan. California law also recognizes other exceptions to termination of parental rights (TPR) for tribal children. Many tribal cultures do not believe in TPR. Accordingly, it is good cause not to terminate if TPR would interfere with connection to tribal community or membership or the child's tribe has identified guardianship, long-term foster care, or another permanent plan as the preferred plan for the child. (WIC, § 366.26(c)(2)(B)); CRC 5.485(b).)

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).

Child(ren):			
DOB:			
POB:			
Enrolled?			
Tribe:			

Maternal Grandfather:		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		
Former Address:		
Telephone Number:		

Maternal Grandmother:		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		
Former Address:		
Telephone Number:		

Maternal Great Grandfather:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	

Maternal Great Grandmother:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	

Maternal Great Grandfather:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	

Maternal Great Grandmother:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	

MOTHER	
Name:	
AKA:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
Email address:	

Other (i.e. direct lineal ancestors)

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).

Child(ren):			
DOB:			
POB:			
Enrolled?			
Tribe:			

Paternal Grandfather:		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		
Former Address:		
Telephone Number:		

Paternal Grandmother:		→
DOB:		
POB:		
POD:		
DOD:		
Tribe/Enrolled? Y/N		
Current Address:		
Former Address:		
Telephone Number:		

Paternal Great Grandfather:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
Paternal Great Grandmother:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
Paternal Great Grandfather:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
Paternal Great Grandmother:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	

FATHER	
Name:	
AKA:	
DOB:	
POB:	
POD:	
DOD:	
Tribe/Enrolled? Y/N	
Current Address:	
Former Address:	
Telephone Number:	
Email address:	

Other (i.e. direct lineal ancestors)

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 or father may be a member of or eligible for membership in a federally recognized Indian tribe (*Circle one of the underlined*):

Traditional and official tribe(s) name(s): _____

State/Location of tribe(s): _____

List name of reservation or Alaska Native Village, if known (list all): _____

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 parents, grandparents, or other lineal ancestors 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*)

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 received services from the Bureau of Indian Affairs? 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 heritage is the child's father, has paternity been established? If so, by what means? (biological testing, paternity judgment, Declaration of Paternity, etc.)

10. Please provide any additional information that would help in determining if the child/ren is/may be considered an Indian child/ren, including names and contact information for family members who have additional family and tribal information.

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

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

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

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

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

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

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

¹ Current as of December 2020.

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

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

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

§23.11 Notice.

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

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

...

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

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

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

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

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

(b) Notice must be sent to:

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

(2) The child's parents; and

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

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

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

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

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

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

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

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

California Welfare & Institutions Code

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

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

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

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

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

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

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

reservation or in an Alaska Native village.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

California Rules of Court

Rule 5.481. Inquiry and notice

(a) Inquiry

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Notice

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

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

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

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

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

Advisory Committee Comment

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

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

(a) Commencement of hearing

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

(1) Of the contents of the petition;

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

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

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

(b) Parentage inquiry

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

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

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

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

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



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



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

(d) Health and education information (§ 16010)

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

Judicial Council Forms

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

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