



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

### I. Investigation/Intake Requirements

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

### II. ICWA Notice Requirements

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

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

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

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

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

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

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

### **IV. Jurisdiction Report/Hearing Requirements for Indian Child**

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

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

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

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

#### **VI. Foster Placement Requirements**

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

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

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

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

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

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

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

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

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