ORANGE COUNTY SOCIAL SERVICES AGENCY

CFS OPERATIONS MANUAL

Effective Date: April 28, 1993 **Number: G-0309**
Revised: November 13, 2007
Revised: November 9, 2010

Indian Child Welfare Act

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Purpose

To provide guidelines to ensure compliance with the Indian Child Welfare Act (ICWA).

Approved

This policy was approved by Gary Taylor, Director of CFS, on November 9, 2010. *Signature on file.*

Background

In 1978, Congress passed the ICWA to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs."

ICWA primarily applies to dependency cases under Welfare and Institutions Code (WIC) Section 300. However, it also contains safeguards for voluntary placements of Indian children and can apply to WIC § 602 delinquency cases involving placement and treatment programs. It does not apply to custody disputes between Indian parents. It may apply if Probate Guardianship is being considered.

California Senate Bill (SB) 678, effective January 1, 2007, brought state requirements in line with the federal ICWA. It also allowed non-federally recognized tribes to have a voice in child welfare proceedings.

This revision reflects directives from the California Department of Social Services (CDSS) regarding such issues as tribally approved foster homes and the use of a qualified expert witness. The revision includes changes in responsibilities caused by the implementation of new forms used when inquiring and noticing parties of Indian status.

Legal Mandates

Public Law 95-608 (ICWA) of November 8, 1978 established standards for child custody proceedings and out-of-home placement of Indian children to prevent break-up of Indian families and cultural loss to children.

Senate Bill (SB) 678 (2006) conforms state law to federal standards regarding Indian children and families.

Assembly Bill (AB) 2310 (2008) amended Welfare and Institutions Code (WIC) Section 391 to require that the written court report at termination include information regarding the youth's Indian heritage or tribal connections.

California Department of Social Services (CDSS) Manual of Policies and Procedures, Section 31-515 directs policy on ICWA inquiry, notice, and documentation of efforts made to provide services and prevent breakup of the Indian family.

CDSS Manual of Policies and Procedures, Section 31-520, directs policy on placement of Indian children.

California Rule of Court 5.480-5.487 directs determination of ICWA status, notice, jurisdiction, placement standards, and required findings and orders for an Indian child.

California Rule of Court 5.708 describes the involvement of the tribe in the development of the case plan.

Health and Safety Code Section 1505(o)(2) exempts from licensure as a community care facility a foster home that is approved or licensed by an Indian child's tribe.

Welfare and Institutions Code Sections (WIC) 110, 224, 224.1–224.6, 272, 290.1–290.2, 291–295, 297, 305.5, 306, 306.6, 317, 361, 361.31, 361.4, 361.7, 366, 366.26, 391, 727.4, 10553.1, and 16507.4–16507.5 are applicable to ICWA and were added or revised, based on Senate Bill 678.

CDSS ACL 08-02 conveys implementing regulations for SB678.

CDSS ACIN I-86-08 details information regarding tribally approved foster homes.

CDSS ACL 09-28 clarifies how ICWA applies to adoption proceedings, and explains the use of Judicial Council rules and forms in the context of ICWA.

CDSS ACIN I-40-10 provides information on the use of qualified expert witnesses under ICWA.

Definitions

Active efforts: Efforts to prevent removal of a child/breakup of an Indian family and in reunifying the family, using available resources of extended family members, tribe, Indian social service agencies, and individual Indian caregivers. Active efforts are assessed on a case-by-case basis. The "active efforts" requirement can be distinguished from the "reasonable efforts" requirement in that the remedial and rehabilitative programs must consider the prevailing social and cultural conditions and way of life of the Indian child's tribe.

Reasonable efforts: Efforts made to prevent or eliminate the need for removing the child from the home, such as, but not limited to, counseling, parenting training, mentoring programs, substance abuse treatment, transportation, and therapeutic day services

Discovery: Acquisition of case records and notes used to support agency decisions and provide evidence for Court recommendations.

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Exclusive jurisdiction: Special authorization given a tribe by the Secretary of the Interior to be the only court that has jurisdiction over Indian child custody matters.

Indian child: An unmarried person under the age of 18 years who is 1) a member of a federally recognized Indian tribe or 2) eligible for membership in such a tribe and is the biological child of a tribal member.

Indian child's tribe: The Indian tribe in which the child is a member or eligible for membership or the tribe with which the child has more significant contacts, if the child is eligible for membership in more than one tribe.

Indian custodian: Any Indian person who has legal custody under tribal law/tribal custom/state law or who has been given temporary physical care, custody, and control of an Indian child by the parents.

Parent of an Indian child: The biological parent or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law/custom.

Indian tribe: Any tribe, band, nation, or other organized group or community of Indians eligible for services provided by the Secretary of the Interior because of their status as Indians. Recognized Indian tribes are listed annually in the Federal Register.

Qualified expert witness: A person who can give competent testimony and is qualified to specifically address the question of whether continued custody by the child's parents or Indian custodian is likely to result in serious physical or emotional damage to the child.

Tribal court: A court with jurisdiction over Indian child custody proceedings and is a Court of Indian Offenses, or a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that has authority over Indian child-custody proceedings.

Good cause: A legally sufficient reason for a ruling or other action.

POLICY

General Guidelines For any child for whom a petition has been or will be filed under Welfare and Institution Code (WIC) § 300, Children and Family Services (CFS) staff will:

A. Inquire if child has any American or Native Alaskan Indian heritage.

B. Make efforts to establish child's tribal membership status or eligibility for membership, when applicable.

C. Provide proper notice of dependency proceedings to parent, Indian custodian, federally recognized tribe, and Bureau of Indian Affairs (BIA), when applicable.

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D. Adhere to ICWA placement preferences and legal standards of services for Indian children, when applicable.

E. Advise Court of all efforts made to establish child's Indian status and meet the higher legal standards for Indian child placement and services, when applicable.

F. Extend ICWA related services to children who have Indian ancestry but cannot be documented. This includes tribes recognized by the state.

Inquiry

At initial contact, Emergency Response social work staff will ask the following parties about any known American or native Alaskan Indian ancestry.

A. Child.

B. Parent or guardian.

C. Others available that have interest in and knowledge about the child, including extended family members.

Indian Child Inquiry Attachment [ICWA 010-(A)] will be completed and attached to the petition filed with Juvenile Court, unless filing a Subsequent or Supplemental Petition when there is no new information.

Parents appearing at Court for the first time will also be asked about Indian heritage by Court Officers. The parent's attorney will request that each parent completes *Parental Notification of Indian Status* (*ICWA 020),* declaring any known heritage. If a parent declares Indian heritage, the parent will be interviewed for further family history information by ICWA Unit staff.

These actions will be repeated each time a child is re-detained, or if siblings are detained at a later time, even when Indian heritage information is on file.

At continuing contact, social work staff will inquire about American or native Alaskan Indian ancestry any time it appears that the child may be of Indian descent, new statements or information are received, or a parent is considering relinquishment action.

Initial Notice

CFS staff will initiate a referral to the CFS ICWA Unit for notice purposes any time it becomes known or there is reason to know that a child may have Indian heritage.

Initial notices will be sent by the ICWA Unit to all named tribes, when the identity and location of the tribe(s) are known. Notice must be sent 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 only be sent to the tribe determined to be the Indian child's tribe.

When there is evidence that the child has a certain Indian heritage, but the identity of the specific tribe of which a child may be a member is unknown, notice must be sent to all the applicable federally-recognized tribes as well as to the Bureau of Indian Affairs (BIA) (i.e., if Cherokee heritage is indicated but no specific tribe is indicated, notice must be sent to all Cherokee tribes).

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Notice to the tribe must be given to the Tribal Chairperson unless the tribe has designated another agent for service. The notice must be addressed to this individual specifically and not merely to the tribe. The notice must be sent to the individual and address listed in the current Federal Register.

Notice must be given whenever there is reason to know the child may be an Indian child and for every hearing thereafter unless and until the Court makes a finding that ICWA does not apply. Duplicate notices will be sent to the child's parent/guardian and Indian custodian.

Notice of Involuntary Child Custody Proceedings for an Indian Child (ICWA-030) will be completed for this purpose. Notice will be sent by certified mail, return receipt requested, and must be received by the tribe(s) at least 10 days prior to the hearing. Court will not be able to proceed with any hearing unless this notice requirement is met. (**Exception:** Detention hearing timeline is "as soon as possible" after the petition filing.)

Notice of Involuntary Child Custody Proceedings for an Indian Child (ICWA-030) is also sent to the parent/guardian and Indian custodian, if any.

If the identity or location of the child's parent/guardian, Indian custodian, or Indian child's tribe cannot be determined, the notice will be sent to the BIA.

If the identity or location of the parents, Indian custodian, or the Indian child's tribe is known, a copy of the notice will also be sent directly to the Secretary of the Interior unless this requirement is waived in writing by the Secretary and the waiver has been filed with the Court.

Notice will include all the following information that is known:

A. Time, date, and place of hearing.

B. Nature of hearing.

C. Name, date of birth (DOB), place of birth (POB) of the Indian child.

D. The name of each Indian tribe in which child may be a member or eligible for membership.

E. All available names of child's biological parents, grandparents, great-grandparents, or Indian custodians. This includes maiden, married, current, and alias names.

F. All available information about the above relatives (e.g., current and former addresses, DOBs, POBs, places of death, tribal enrollment numbers, and any other identifying information).

G. Location, mailing address, and telephone number for the Court and all parties that are noticed.

   Exception: Contact information for an adult or child is not required if that person is at risk of harm as a result of domestic violence, child abuse, sexual abuse, or stalking.

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H. A statement which includes the:

1. Right of parent(s), Indian custodian(s), and tribe to intervene in the dependency proceeding, petition Court to transfer proceeding to the Indian child's tribal court, and request up to 20 days from receipt of notice for purpose of preparation for the proceeding. (**Exception:** Detention hearing.)

2. Potential legal consequences of proceedings on future custodial and parental rights of child's parents/Indian custodians.

3. Right to Court-appointed Counsel if unable to afford an attorney.

4. Need to maintain confidentiality of the information included with notice.

5. Right of tribe to decline transfer of jurisdiction.

I. Copy of the petition.

J. Copy of child's birth certificate, if available.

Proof of Notice

Proof of notice, including copies of notices sent and all return receipts and responses received, must be filed with Court on the day of each hearing. Copies will be retained in the legal file of both County Counsel and CFS.

ICWA Determination

Only tribes can determine tribal membership, or eligibility for membership, of the child. In the absence of an identified tribe, a determination by the BIA is conclusive.

A. When a tribe or BIA confirms a child has membership or eligibility for membership in an Indian tribe and is a biological child of a tribe member, Court will determine that ICWA applies.

B. When proper notice has been given and no response received within 60 days of notice receipt, Court may determine that ICWA does not apply. It must, however, reverse that decision if an affirmative response is later received from a tribe.

Court will also make this determination when all tribal responses have been received and are negative.

ICWA Applies

When ICWA applies:

A. The tribe may intervene (i. e., participate) at any point in the proceeding. They may also choose to actively monitor the case instead of intervening. Either decision will require continued notice and court reports provided to the tribe.

B. Timely notice will be provided by the ICWA Unit for all subsequent Status Review hearings. Information included in the initial notice (items D through J in the "Initial Notice" Policy section above) need not be repeated.

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If parental rights are terminated, only the tribe will continue to receive notice for all hearings, including the hearing at which an adoption petition is granted. Terminating rights of parents does not terminate rights of the child's tribe.

C. Placement preferences will be followed, unless:

1. Court finds good cause to deviate.

2. Placement is following removal and is an emergency, temporary placement needed to protect the child from serious physical or emotional damage.

Refer to "Placement" Policy section below.

D. The active efforts standard will be used when providing services. Refer to "Active Efforts" Policy section below.

E. Testimony will be required by a qualified expert witness prior to the Court ordering foster placement, termination of parental rights, or Legal Guardianship. Testimony will also be required at the Detention hearing, if ICWA status is known at that time.

Court may accept a declaration or affidavit, instead of personal testimony, if all parties agree.

Whether testimony or declaration is used, the qualified expert witness will receive authorization to have contact with child, caregiver, and SSW in order to prepare.

F. Court must certify for parents wishing to relinquish parental rights, that they fully understand the terms and consequences of that action.

G. For the plan of Adoption at permanency hearings, Court and CFS must consider two compelling reasons under WIC § 366.26(c)(1)(B)(iv) not to terminate rights of Indian parents:

1. Because terminating parental rights would interfere with the child's connection to the tribal community or membership rights.

2. Because the child's tribe has identified Legal Guardianship or Long Term Foster Care with a fit and willing relative, or has another planned permanent living arrangement for the child.

H. When there is one or more tribes associated with the child:

1. If the child is not a member of any of those tribes, all tribes will decide who has the strongest bond with the child and will serve as the primary tribe to intervene in the Indian child's case.

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2. If the tribes cannot decide, the Presiding Judge of the Juvenile Court has the discretion to determine who will serve as the primary tribe in the child's case.

3. If the child is an enrolled member of one of the tribes, only that tribe can intervene for that child.

ICWA Does Not Apply

When ICWA does not apply:

A. No further notice is required unless new information is received during case activities. Per WIC § 224.3 (a), the SSW always has an "Affirmative and Continuing" duty to inquire regarding ICWA when new information has been received or a parent becomes known for the first time. If additional information becomes known, staff will make a new referral to the ICWA Unit, noting the new information and next hearing date.

B. The determination, and date of determination, that ICWA does not apply will be repeated in each subsequent court report for the child, as well as the original ICWA statement submitted in the Jurisdiction-Dispositional report. Refer to "Court Reports" Policy section below.

Active Efforts

Active efforts provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. CFS staff must give consideration to the prevailing social and cultural values and way of life of the tribe with attempts made to incorporate available resources of extended Indian family members, the tribe, Indian social service agencies, and Indian caregivers.

Examples: Social work staff may discuss cultural issues with the client in order to customize resources to the family, attempt to connect them to cultural organizations, visit them at their residence instead of scheduling an office appointment, or drive them to a visit/case plan activity instead of sending a bus pass by mail. Additionally, consultation with tribal social workers may prove helpful.

Active efforts will be made:

A. Prior to detaining a child, if it is known that the child is an Indian child.

B. To advance reunification efforts of children with a Family Reunification (FR) service component.

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Placement

Foster and adoptive placements of Indian children must follow a specified order and use services of the tribe, if available. Placement of Indian children will:

- Be in the least restrictive setting
- Be within reasonable proximity to the Indian child's home
- Meet the child's special needs

This guides placement choices that reflect tribal cultural values and maintains relational ties of child and tribal community.

The child's tribe will be notified and requested to approve the out-of-home placement plan. If the child's tribe has formally intervened, contact will be with the tribal representative identified in the tribe's "*Notice of Designation of Tribal Representative and Notice of Intervention" (ICWA-40).* When the child's tribe has not intervened formally, contact will be with the Tribal Chairperson or designee. The appointment of a designee will be provided in writing.

Placement preference will be considered in the following order:

A. **Foster-preadoptive placement:**

1. Member of Indian child's extended family.

2. Foster home licensed, approved, or specified by the Indian child's tribe, whether on or off the reservation.

   Note: Tribally approved homes are equivalent to licensed or county approved homes and are exempt from licensing requirements under California Health and Safety Code § 1505. However, tribally approved homes are not exempt from criminal and child abuse record clearance requirements for all potential caregivers and all adults living in the tribally approved home. Refer to CFS Policy and Procedure (P&P) Clearances—Relative Assessment (K-0101) for guidance on conducting background checks.

3. State or county licensed or certified Indian foster home.

4. Children's institution approved by the tribe or operated by an Indian organization and offering a program to meet the child's needs.

B. **Adoptive placement:**

1. Member of child's extended family.

2. Other members of the child's tribe.

3. Other Indian family.

C. **Exceptions:**

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The Court may modify the order of preference under ICWA only for good cause. If needed, staff will provide information to Court showing good cause to deviate from above preferences by documenting the following:

1. Request of the parent or Indian custodian.

2. Request of the child.

3. Extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness.

4. Unavailability of suitable families based on a diligent effort to identify families meeting the preference criteria.

The tribe, by resolution, may also establish a different preference order for the child's placement if it provides the least restrictive setting. Good cause does not need to be documented for this decision.

Court Reports

CFS staff will report to the Court all information gathered regarding the child's Indian heritage for use in making an ICWA determination and all efforts made to meet ICWA requirements, when ICWA applies.

A. **For Detention hearings:**

1. Indicate (check box) on the *Indian Child Attachment [ICWA-010[A])* whether child may be a member, or eligible for membership, in an Indian tribe.

2. Inquiry responses and parental statements will be reported to Court in the Detention Hearing Report (DHR), Indian Child Welfare Act Status section.

When it is known that ICWA applies to the case:

3. **Active efforts** made to provide services to prevent the breakup of the Indian family and whether efforts were successful will be documented in the DHR.

B. **For Jurisdictional/Dispositional hearings:**

1. All efforts at notice and obtaining Indian status for a child will be documented by the ICWA Unit and their narrative included in the report, Indian Child Welfare Act Status section.

2. Court will be provided with proof of notice and receipt of tribal responses for the child, under separate cover.

3. If the child is determined to be an Indian child, a case plan will be prepared 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. In preparing the case plan, the input of the child's identified Indian tribe will be solicited and integrated into the plan.

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4. For an Indian child, the social study as described by WIC § 358.1, will include the results of a consultation with the Indian tribe regarding whether tribal customary adoption (TCA) is an appropriate permanent plan for the child should reunification efforts fail.

5. The report will provide a placement plan that meets the ICWA placement preference or, if not, provide the reasons that good cause exists to deviate from those preferences.

C. **For Status Review and WIC § 366.26 hearings:**

1. The previous ICWA statement made in the Jurisdictional-Dispositional report by the ICWA Unit will be repeated in each subsequent report, Indian Child Welfare Status section.

   ICWA determination and date of determination, if any, will be added.

2. The appropriate Court Minute Order will be reviewed to confirm that it contains the ICWA finding. If not, a recommendation will be added to the current court report that a finding be made regarding ICWA.

3. In the case of an Indian child, the assigned SSW will consult with the child's tribe in the development of the case plan and the plan for permanent placement, including whether TCA is an appropriate permanent plan for the child if reunification is unsuccessful.

4. For the WIC § 366.26 court report, if the tribe does select TCA, this will be included in the child assessment along with whether the tribe will complete it's own homestudy or procure a tribal designee.

5. If the child's tribe chooses not to pursue TCA, the WIC § 366.26 court report recommending parental rights be terminated will provide the Court with evidence that the recommendation meets the ICWA standard of beyond a reasonable doubt and whether either exception applies (WIC §366.26[B][vi]).

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Expert Witness

ICWA requires expert witness testimony before Court can order an involuntary foster care placement of a child or termination of parental rights.

No removal of an Indian child from the custody of his or her parents or placement in out-of-home care may be ordered in the absence of a determination, supported by “clear and convincing evidence,” including the testimony of a qualified expert witness, that the “continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.”

In a case involving the termination of parental rights, the requirement for evidence is higher. Parental rights may not be terminated in the absence of a determination, supported by evidence “beyond a reasonable doubt,” including the testimony of a qualified expert witness, that the “continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.”

The qualified expert witness may also be used to provide information on the separate ICWA requirement to engage in “active efforts” designed to prevent the breakup of the Indian family.

Persons qualified for the role of expert witness may be those recognized by the tribal community as leaders/helpers or someone having substantial education and experience in child and family services to Indians. The witness will be knowledgeable of tribal customs, social/cultural standards of the tribe, family organization, and child-rearing practices. Professionals that meet the qualifications may include the following, provided they are not an employee of the person or agency recommending detention, foster care placement, or termination of parental rights:

- Tribal elder
- Tribal historian
- Tribal spiritual leader
- Traditional tribal therapist and healer
- Psychologist
- Physician
- Sociologist
- Social worker

The Court may waive the requirement for live expert witness testimony and accept a declaration or affidavit from the expert witness only if all parties have agreed in writing and the Court is satisfied the agreement is made knowingly, intelligently, and voluntarily.

If a tribal representative serves as witness, a representative from the child’s specific tribe is preferable but another tribe can provide testimony.

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Jurisdiction

If a tribe has been granted exclusive jurisdiction by the Secretary of the Interior, CFS staff will notify the tribe of the child's removal from the parent's home by the next working day. If the tribe determines the child is an Indian child, the dependency proceeding will be transferred to the tribal court. In California, the only tribe having exclusive jurisdiction is the Washoe Indians of Nevada/California.

For those tribes having non-exclusive jurisdiction, the tribe, parent, or Indian custodian may petition Court to transfer the proceedings to the tribal jurisdiction. The Court will transfer the case unless it finds good cause not to, such as:

A. One or both parents object to the transfer.

B. Tribe does not have a tribal court.

C. The tribal court declines jurisdiction.

Note: Transferring jurisdiction to an out-of-state tribe does not trigger the application of the Interstate Compact on Placement of Children (ICPC).

Intercounty Transfer—Incoming Cases

For all cases transferred into Orange County, the Intercounty Transfer (ICT) Coordinator will research the child's ICWA status established by the sending county and include the information and findings in the Acceptance of Transfer report. Refer to CFS P&P Intercounty Transfers (G-0402) for additional information.

Interstate Compact for the Placement of Children (ICPC)

ICPC regulations apply when the Court retains jurisdiction of the Indian child and seeks to place in an out-of-state tribally approved home. The out-of-state ICPC administrator is responsible for ensuring that the placement is a tribally approved home per ICWA and that the placement meets the criminal record requirements set forth in the ICPC regulations.

Documentation of Active Efforts

ICWA requires that a record of each foster or adoptive placement of an Indian child be maintained, and that the record provide evidence of the efforts to comply with the order of placement preferences. The record will document "active" efforts taken to comply with the order of placement preference and will be maintained in "perpetuity."

For information on documentation, refer to CWS/CMS Data Entry Standards—Documenting Indian Child Welfare Act (ICWA) Cases in CWS/CMS.

Relinquishment

CDSS will not accept a relinquishment until the initial ICWA inquiry is made. All relinquishment documents must be accompanied by the *Indian Child Inquiry Attachment (ICWA-010[A])* and the *Parental Notification of Indian Status (ICWA-020)* to document that the initial inquiry has been made. Refer to CFS P&P Voluntary Relinquishment (C-0203) for additional direction regarding relinquishments.

If the initial inquiry shows that the child may have Indian ancestry, CDSS will not accept the relinquishment until one of the following:

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- All recipients have responded that child is not a tribal member or eligible for tribal membership. Attach copies of all ICWA forms and tribal responses to relinquishment documents
- Sixty days have lapsed and the Court has determined that ICWA does not apply. Attach copies of all ICWA forms, copy of mailing certification, and court minute order to relinquishment documents
- All tribes have responded and the child is identified as a tribal member or eligible for tribal membership. Attach copies of all ICWA forms and the response from the tribe to the ICWA relinquishment. Submit these forms with the other relinquishment documents

Concurrent Planning

TCA is an additional permanency option for a dependent Indian child. As part of the concurrent planning process, the assigned SSW must inform the tribe that TCA is a permanency option. This plan may be selected by the child's tribe at any point in the dependency process (as early as the Dispositional hearing) as long as the case remains open and the Court has not ordered termination of parental rights.

When FR services are offered, and the tribe recommends TCA, it will serve as the child's concurrent permanent plan until FR services are no longer offered. As part of the concurrent planning process, the assigned SSW will be responsible for consulting with the tribe and reporting to the Court regarding the likelihood that the child will be adopted and if TCA remains an appropriate permanent plan.

Once TCA becomes the concurrent plan, CFS Adoptions Program must consult with the child's tribe to facilitate the TCA. For additional information regarding concurrent planning, refer to CFS P&P Concurrent Planning (D-0202).

For ICWA mandates related to adoption other than notice requirements, refer to CFS P&P Tribal Customary Adoption (C-0705).

ILP Services

For Indian youth transitioning to independent living, all known information regarding the youth's Indian heritage or tribal connections will be provided in writing at termination of dependency. Refer to CFS P&P Independent Living Program (ILP) Services (D-0504).

Non-ICWA Cases

For tribes that are not federally recognized, the Court may permit participation in the proceeding upon request of the tribe. Participation by the tribe may mean all of the following:

- Be present at hearings
- Address the Court
- Request and receive notice of hearings
- Request to examine court documents relating to the proceeding
- Present information to Court that is relevant to the proceeding
- Submit written reports and recommendations to Court
- Perform other duties and responsibilities as requested or approved by Court

Per best practice, services will be extended to children who have Indian ancestry which cannot be documented. Informal notice may be given to the specific tribe and their assistance with placement resources and programs may be requested.

CWS/CMS

Records of notice, active efforts, compliance (or attempts at compliance) with placement preference order will be recorded in the child's CWS/CMS case per CWS/CMS Data Entry Standards—Documenting Indian Child Welfare Act (ICWA) Cases in CWS/CMS.

The child's tribe may request authorization from CDSS to access all placement records for a child. If granted, the information will be retrieved through the CWS/CMS case.

Legal/Appeal Issues

Reasons for appellate courts to reverse orders and findings on children's cases include:

A. Active efforts not made or documented.

B. Improper or untimely notice given.

C. Failure to inquire of parent regarding Indian heritage.

D. Failure to follow-up with parents or relatives so that the most detailed information possible is contained in the notices sent.

E. No expert witness to affirm, either through testimony or affidavit, that continued custody of the child by parent/Indian custodian is likely to result in serious emotional or physical damage.

Indian tribes may also petition Court to invalidate court orders when ICWA has not been followed appropriately. This can result in the dependency, case plan, and placement being set aside.

Discovery

Indian tribes have a right to discovery. CFS staff who receive discovery requests from tribes will refer the tribes to the CFS Custodian of Records.

REFERENCES

Attachments and CWS/CMS Data Entry Standards

Hyperlinks are provided below to access attachments to this P&P and any CWS/CMS Data Entry Standards that are referenced.

- CWS/CMS Data Entry Standards—Documenting Indian Child Welfare Act (ICWA) Cases in CWS/CMS

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Hyperlinks

Staff accessing this document by computer may create a direct connection to the following references by clicking on them.

- California Department of Social Services (CDSS) Indian Tribe Listing
- National Indian Child Welfare Association (NICWA)
- American Indian Resource Directory American Tribe Listing (Indians.org)
- U.S. Department of Interior, Bureau of Indian Affairs (BIA) Tribal Directory
- CFS P&P Tribal Customary Adoption (C-0705)
- CFS P&P Probate Guardianship (K-0401)
- CFS P&P Voluntary Relinquishment (C-0203)
- CFS P&P Independent Living Program (ILP) Services (D-0504)
- CFS P&P Clearances—Relative Assessment (K-0101)
- CFS P&P Concurrent Planning (D-0202)
- CFS P&P Intercounty Transfer (G-0402)

REQUIRED FORMS

Online Forms

Required forms listed below may be printed out and completed, or completed online, and may be accessed by clicking on the link provided.

Form Name	Form Number
Attorneys of Record	F063-28-88
ICWA Case Alert	F063-25-503

Hard Copy Forms

Required forms listed below must be completed in hard copy (including multi-copy NCR forms) and must be obtained in the CFS forms rooms. ***For reference purposes only,*** links are provided to view these hard copy forms, where available.

Form Name	Form Number
ICWA Tracking Log (available with ICWA Unit only)	F063-28-345
ICWA Acco	F063-25-1129

CWS/CMS Forms

The following required forms may **only** be obtained in CWS/CMS. ***For reference purposes only,*** links are provided to view these CWS/CMS forms, where available.

Form Name	Form Number
Indian Child Inquiry Attachment	ICWA-010(A)
Parental Notification of Indian Status	ICWA-020
Notice of Child Custody Proceeding for Indian Child	ICWA-030
Notice of Designation of Tribal Representative and Notice of Intervention	ICWA-040
Indian Child Welfare Act (ICWA) Notice Referral	F063-28-349
Juvenile Dependency Petition	JV-100

Brochures

Brochures to distribute in conjunction with this procedure include:

Brochure Name	Brochure Number
None.	

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PROCEDURE

Required Actions—Removal of Child	The following actions for ICWA compliance must be completed for any child whom a petition has been or will be filed under Welfare and Institution Code (WIC) § 300.	
Staff Responsible	**Step**	**Required Action**
Intake Senior Social Worker (SSW)	**1.**	Complete the *Indian Child Inquiry Attachment* (*ICWA-010[A])* using: • Information from the Investigation Narrative • Interview of the parents (and child, if old enough) about any known American Indian heritage Attach completed *Indian Child Inquiry Attachment (ICWA-010[A])* to *Juvenile Dependency Petition (JV-100).* If family denies Indian heritage: • Report denial statements of all parents in Detention Hearing Report, noting that ICWA does not apply • Do not complete any further steps listed below If family claims Indian heritage: • Obtain as much tribal identification as possible. Include any information about California tribal membership which may not be a federally-recognized tribe • Note on *Indian Child Inquiry Attachment (ICWA-010[A])* to *Juvenile Dependency Petition (JV-100)* and in Detention Hearing Report that ICWA may apply. Include parental statements, if any, in Indian Child Welfare Status section • Continue with completion of the following steps If parent(s) unavailable for statement: • Report in Detention Hearing Report that Indian Child inquiry was not made due to unavailability • Continue with completion of the following steps
	2.	Complete referral to ICWA Unit: a. Record all family information received on *ICWA Notice Referral* (*F063-28-349)* within child's electronic referral/case per CWS/CMS Data Entry Standards—Documenting Indian Child Welfare Act (ICWA) Cases in CWS/CMS. b. Send via email to ICWA-CFS Inbox.
ICWA Unit	**3.**	Retrieve referral from Inbox and assign to ICWA worker. Review court detention calendar for all new detentions.
	4.	Attend Juvenile Court on day of Detention. Obtain copy of Detention Hearing Report and petition; review ICWA Status section of report.

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Court Officer SSW

5. Ask all parents present about Indian heritage prior to hearing. If yes, contact ICWA Unit for further interview.

ICWA Unit

6.

a. Interview all related parties in attendance at child's Detention hearing regarding Indian family history. Obtain phone numbers of any other family members who have additional information. Request that parents complete *Parental Notification of Indian Status (ICWA-020)* and file with Court.

b. Inform Court Officer that parents and relatives have been interviewed.

c. Request the assigned SSW to make ICWA Notice referral, if none received.

7. Interview extended family members by telephone.

8. Record all information on *Notice of Child Custody Proceeding for Indian Child (ICWA-030)* within child's CWS/CMS referral/case per CWS/CMS Data Entry Standards—Documenting Indian Child Welfare Act (ICWA) Cases in CWS/CMS. Add name, address, and phone information of all legal parties involved. Review and save to data base.

9. Make CWS/CMS entries gathered on *Notice of Child Custody Proceeding for Indian Child (ICWA-030)* in child's electronic case per CWS/CMS Data Entry Standards—Documenting Indian Child Welfare Act (ICWA) Cases in CWS/CMS.

10. Complete *ICWA Tracking Log (F063-28-345)* indicating tribe(s) noticed, hearing dates, and notice dates.

11. Prepare notice:

a. *Notice of Child Custody Proceeding for Indian Child (ICWA-030)*

b. Attach petition.

c. Attach copy of child's birth certificate, if available.

d. Add other information/forms, as appropriate.

e. Sign proof of service section.

12. Send notice certified, return receipt requested, to parents, Indian custodian, and all named tribes 15 days prior to the hearing. Use tribal listing provided by the BIA.

13.

a. Create narrative of all notice efforts regarding child's Indian status (i.e., ICWA statement).

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b. Send ICWA statement via email to assigned SSW with instructions to cut and paste entire statement into Jurisdictional-Dispositional court report, ICWA Status section.

14. Receive responses from tribes.

15. Enter ICWA eligibility in child's CWS/CMS case per CWS/CMS Data Entry Standards—Documenting Indian Child Welfare Act (ICWA) Cases in CWS/CMS.

16. Document responses on *ICWA Tracking Log (F063-28-345).* Track and confirm receipt using usps.com, if necessary.

17. Prepare packet for Court:

a. Identify original documentation for Court with copies for County Counsel records and child's blue legal file. If siblings, prepare packet for each child.

b. Place on *ICWA Acco (F063-25-1129)*. If tribe has confirmed ICWA status for the child, add *ICWA Case Alert (F063-25-503).*

c. Send to Court one day prior to child's hearing.

d. Maintain duplicate set of records in ICWA Unit.

Assigned SSW

18. Submit Jurisdictional/Dispositional Report with recorded ICWA statement received from ICWA Unit in Indian Child Welfare Act Status section.

• Interview any parent or relative not previously interviewed regarding possible Indian heritage

Court Officer SSW

19. a. Submit original ICWA documents to Court at child's hearing.

b. Give set of document copies to assigned County Counsel.

c. File set of document copies in child's blue legal folder, left side. For children whose ICWA status has been confirmed by tribe, place *ICWA Case Alert (F063-25-503)* on top of documents.

20. After Court makes findings and orders:

a. Record ICWA determination, if any, on *Attorneys of Record (F063-28-88),* child's blue legal file, right side, and *ICWA Tracking Log (F063-28-345).*

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		b. Record date ICWA notice documentation submitted to Court and next hearing date on *ICWA Tracking Log (F063-28-345).* Add any other pertinent information, e.g., transfer orders, petition dismissed, etc.
		c. Return *ICWA Acco (F063-25-1129)* with *ICWA Tracking Log (F063-28-345)* to ICWA Unit.
ICWA Unit	**21.**	a. Retain *ICWA Acco (F063-25-1129)* with documentation until all responses have been received and filed with Court or six months have passed since ICWA determination made by Court, if responses have not been received. File *ICWA Acco (F063-25-1129)* in ICWA Unit files.
		b. Return copy of child's *ICWA Acco (F063-25-1129) to* assigned SSW with all ICWA notice documentation and responses received.
Assigned SSW	**22.**	File *ICWA Acco (F063-25-1129)* in child's service file.
	23.	Repeat ICWA statement in each status review court report submitted, Indian Child Welfare Status section. Add ICWA determination, and date of determination, made by Court. • Interview any parent not previously interviewed regarding possible Indian heritage
	24.	Follow steps in sections below according to the child's ICWA determination.

Required Actions—ICWA Does Not Apply	The following actions must be completed when the Court finds that ICWA does not apply to a child's dependency proceedings.	
Staff Responsible	**Step**	**Required Action**
Assigned SSW	**1.**	Check appropriate Minute Order to see if it contains the ICWA finding consistent with that noted on *Attorneys of Record* form. If ICWA finding is documented: • Report the determination and date of determination on each subsequent court report, Indian Child Welfare Act Status section • Repeat ICWA Statement by ICWA Unit, if any, same section If ICWA finding is missing: • Repeat ICWA Statement by ICWA Unit, if any, Indian Child Welfare Act Status section • Request Court to make ICWA determination for the child
	2.	Provide traditional child welfare services to child and family.
	3.	Send *ICWA Notice Referral (F063-28-349)* to ICWA Unit at any time new or additional statements are received about American Indian heritage that was not previously submitted.

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Required Actions—ICWA Applies	The following actions must be completed when the Court finds that ICWA applies to a child's dependency proceedings.	
Staff Responsible	**Step**	**Required Action**
ICWA Unit	**1.**	Provide timely notice and proof of notice for each hearing to child's tribe and Indian custodian, if any, per above policy. If parental rights are terminated, notice tribe only. Extend notice through to child's Finalization Hearing.
	2.	Send ICWA eligible case listing to Adoptions Clerical Supervisor, when updated, to help with tracking Adoption/ICWA cases.
Assigned SSW	**3.**	Provide timely notice for hearings to each parent.
	4.	Include "ICWA Statement" by ICWA Unit and ICWA determination/date in Indian Child Welfare Act Status section each time a court report is submitted for a statutory hearing.
	5.	Follow ICWA requirements each time child needs placement, per above policy. Document ICWA compliance in child's CWS/CMS case per CWS/CMS Data Entry Standards—Documenting Indian Child Welfare Act (ICWA) Cases in CWS/CMS. Contact ICWA Unit for assistance in notifying and requesting tribe approval of child's proposed placement, if desired. Do not place child until approval given by tribe.
	6.	Provide and document active reunification efforts for FR case plans per CWS/CMS Data Entry Standards—Documenting Indian Child Welfare Act (ICWA) Cases in CWS/CMS. Use all available resources of extended family, Indian social service agencies, and individual Indian caregivers, per above policy.
	7.	Recommend permanent plans for Indian children, when needed, per above policy.
	8.	Consult with County Counsel when needing expert witness testimony for placement, guardianship or adoption permanent plans, or after detaining a child whose ICWA status is known.
	9.	Facilitate contact between the qualified expert witness and the Indian child and family prior to hearing.
	10.	Contact ICWA Unit to request assistance with tribal information or Indian resources, when needed.

Required Actions—Incoming Intercounty Transfer (ICT)	The following actions must be completed when a case is transferred from another California county.

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Staff Responsible	Step	Required Action
ICT Coordinator	**1.**	Research incoming file for child's Indian status established in the sending county.
	2.	Report family history information and the sending county's ICWA determination, if any, in the Acceptance of Transfer report.
	3.	Complete and send *ICWA Notice Referral (F063-28-349)* to ICWA Unit.
Court Officer SSW	**4.**	Ask parents in attendance at the Acceptance of Transfer Hearing about any known American Indian heritage. If yes, contact ICWA Unit for further interview.
ICWA Unit	**5.**	Interview parents at Acceptance of Transfer Hearing and process notice per above initial notice procedure.
Assigned SSW	**6.**	Provide services, placement, and/or permanency according to ICWA status finding.

Required Actions—ICWA Legal Issues	The following actions will be taken when staff encounter ICWA legal issues.

Staff Responsible	Step	Required Action
Assigned SSW/ICWA Unit	**1.**	Consult with County Counsel, as needed, for questions regarding: a. Court jurisdiction under ICWA. b. Legal standard of active efforts. c. Necessary testimony for a specific case situation. d. Good cause for deviating from ICWA placement standards. e. Indian parents' relinquishment of parental rights. f. Recommending termination of parental rights by the legal standard of "beyond a reasonable doubt."
	2.	Refer any telephone contact from tribe requesting discovery to the CFS Custodian of Records.

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