

# SONOMA COUNTY

Family Youth and Children's  
Services



## INDIAN CHILD WELFARE ACT PROTOCOL



2011

## Acknowledgements

The Federated Indians of the Graton Rancheria were instrumental in reinvigorating and reinventing the Sonoma County ICWA Roundtable. Late in 2007, the Graton Tribe contacted attorney Maureen Geary (Maier Pfeffer Kim & Geary, LLP) to assist the Tribe in developing training for and meetings with the tribes in Sonoma County. Over the course of six months, tribes from Sonoma County, Mendocino and Lake Counties and Indian service providers from these counties and the Bay Area met to discuss the various issues impacting Indian children and families specific to Sonoma County.

In June 2008, the Graton Tribe hosted the first meeting of the newly-reconfigured Sonoma County Inter-tribal ICWA Roundtable. Over 50 participants attended and were provided with a Draft ICWA Protocol for implementation by the Sonoma County Human Services Department. During 2009, a work group met weekly to revise the Draft Protocol and reported monthly to the Sonoma County Inter-Tribal ICWA Roundtable as to their progress and future steps. Every tribe in Sonoma County was invited and encouraged to participate.

The work group gratefully acknowledges the contributions of its participants: Michele Porter, Angela Hardin, and Frank Carrio, Federated Indians of the Graton Rancheria; Elizabeth Elgin-DeRouen and Laila DeRouen, Indian Child & Family Preservation Program, representing Stewarts Point Rancheria, Lytton Rancheria and Coyote Valley Reservation; Marcie Becerra, Cloverdale Rancheria; Christine Dukatz, Manchester-Point Arena Tribe; Maureen Geary, Maier Pfeffer Kim & Geary, LLP; Tara Harvey and Maggie Singleton, Sonoma County Counsel's Office; and Bob Harper and Fred Jones, Sonoma County Human Services Department.

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## **I. BACKGROUND**

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

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

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

- Protect the best interests of Indian children;
- 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 that reflect the unique values of Indian culture; and
- Provide assistance to Indian tribes in the operation of children and family services programs.

In 2006, legislation was passed in California (SB 678) that codified into state law various provisions of the federal Indian Child Welfare Act and the BIA Guidelines for State Courts, including changes to dependency, delinquency, probate, and family law codes. This protocol addresses only the dependency process. SB 678 re-affirmed California's interest in protecting Indian children. The proper implementation of the federal ICWA and state laws regarding Indian children is paramount in respecting Indian culture and heritage, preventing the breakup of Indian families and promoting tribal involvement on behalf of Indian children entering the child welfare system.

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

This Protocol is the product of the Sonoma County Inter-Tribal ICWA Roundtable, a collaboration between the Sonoma County Human Services Department, Sonoma County Courts, Sonoma County Probation Department, and Sonoma County tribes, including Federated Indians of Graton Rancheria, Cloverdale Rancheria, Lytton Rancheria, Stewarts Point Rancheria and the Mishewal Wappo Tribe, a variety of tribes from Mendocino County, including the Hopland Band of Pomo Indians, Coyote Valley Rancheria, Manchester/Point Arena Tribe, and Indian service providers, including Sonoma County Indian Health Project, Friendship House, American Indian Child Resource Center, and the Indian Child & Family Preservation Program (ICFPP).

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

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

## **II. AUTHORITY**

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

- **ICWA, 25 United States Code Section 1901-1963:** the act passed in 1978 to provide legal protections designed to prevent the breakup of Indian families.
- **ICWA, 25 CFR Part 23:** federal regulations promulgated to assist in the administration of tribal social services, to outline notice procedure and process for court-appointed counsel.
- **Indian Child Protection and Family Violence Prevention Act from 1990, 25 United States Code Section 3201-3210.** There is no prohibition to workers communicating with tribal representatives to discuss possible tribal affiliation and coordination of services in referrals and cases where there is reason to believe that an Indian child is involved.
- **Bureau of Indian Affairs (BIA) Guidelines for State Courts:** although not intended to have binding legislative effect, Guidelines are the BIA's interpretations of the ICWA and are intended to be used by courts for guidance.
- **WIC Section 224.1:** definitions according to Section 1903 of the ICWA and Indian child membership in more than one tribe; includes factors that need to be considered when determining with which tribe the child has the more significant contact.
- **WIC Section 224.2:** sets forth the notice requirement for an Indian child custody proceeding, including notice to interested parties and proofs of service.
- **WIC Section 224.3:** provides that county welfare departments have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 is to be, or has been, filed is or may be an Indian child in all dependency proceedings if the child is at risk of entering foster care or is in foster care. It sets out circumstances that may provide reason to know that the child is an Indian child and makes clear that a social worker is required to make inquiry regarding the possible Indian status of the child by interviewing parents, Indian Custodian, and extended family members to gather the information required to properly notice the tribe(s). This code section further states that if new information is obtained regarding the child's Indian heritage, the tribe(s) and BIA must be re-noticed with the new information, even if the court already found that ICWA does not apply. Notice must be provided according to WIC Section 224.2.
- **WIC Section 224.4:** states that the Indian child's tribe and Indian Custodian have the right to intervene at any point in an Indian child custody proceeding.

- **WIC Section 224.5:** provides that in an Indian child custody proceeding, the court shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the proceeding to the same extent that such entities give full faith and credit to the public acts, records, judicial proceedings, and judgments of any other entity.
- **WIC Section 224.6:** requires the testimony of a “qualified expert witness” in an Indian child custody proceeding when recommending foster care placement or termination of parental rights. Further explains who qualifies as a “qualified expert witness” and required content of testimony.
- **WIC Section 290.1:** notice requirement for when a child is to be retained in custody, initial petition hearing.
- **WIC Section 290.2:** notice requirement for initial hearing when petition filed.
- **WIC Section 291:** notice requirement for jurisdictional, pretrial, adjudication, or disposition hearing.
- **WIC Section 292:** notice requirement for cases where child(ren) is with parent or guardian.
- **WIC Section 293:** notice requirement for 366.21 or 366.22 hearings.
- **WIC Section 294:** notice requirement for 366.26 hearing.
- **WIC Section 295:** notice requirement for review of permanent plan hearing, 366.3.
- **WIC Section 305.5:** provides that a parent, Indian Custodian, and Indian tribe may petition for the Indian child custody proceeding to be transferred to the jurisdiction of the child’s tribe, and explains what constitutes good cause to deny such a petition.
- **WIC Section 306.6:** states that the court may permit non-federally recognized tribes to participate in the proceeding upon request of the tribe.
- **WIC Section 361.31:** placement preferences for Indian children proposed to be in foster care, guardianship or adoptive placement.
- **WIC Section 361.4:** provides that the home of every prospective caregiver that is not a licensed or certified foster parent must be visited to assess its appropriateness prior to placing the child in the home and that a criminal records check must be done on all persons over 18 in the home.
- **WIC Section 361.7:** notwithstanding provisions of section 361.5, discussion of active efforts that must be offered and unsuccessful before taking an Indian child into temporary custody (except to prevent imminent physical damage or harm to the child) and prior to termination of parental rights.
- **WIC Section 366.24:** section added effective July 1, 2010; requires the juvenile court and social workers to consider and offer or recommend tribal customary adoption as an additional permanent placement option, without termination of parental rights, for Indian children.
- **WIC Section 366.26:** procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court. Includes under subpart (c)(1)(B)(vi) the exception to termination of parental rights because the child is an Indian child and there is a compelling reason for determining that termination would not be in the best interest of the child.
- **WIC Section 16507.4 (b):** explains voluntary family reunification services and procedure to follow for Indian children.

- **Family Code 7907.3:** the Interstate Compact on the Placement of Children (ICPC) shall not apply to any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court under Section 1911 of the ICWA.
- **Probate Code 1449, 1459, 1459.5:** cross-reference to the Welf. & Inst. Code sections for compliance with the ICWA.
- **California Rules of the Court Rules 5.480 – 5.487:** rules apply to all proceedings involving Indian children, applicable in juvenile, probate and family law matters.
- **California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Division 31-515-520:** sets forth ICWA provisions and policies regarding placement of Indian children.
- **CDSS All County Letter 08-02 (January 30, 2008):** provides information and CDSS analysis of changes in state law as a result of the passage of SB 678, implementing the ICWA into California law.
- **CDSS All County Information Notice I-86-08 (November 20, 2008):** provides information regarding the use of tribally-approved homes as placement options for Indian children.
- **CDSS All County Letter 09-28 (June 4, 2009):** clarifies how ICWA requirements and Judicial Council forms impact adoption proceedings.
- **CDSS All County Letter 10-47 (October 27, 2010):** sets forth the requirements and procedure if child's tribe selects tribal customary adoption as the child's permanent plan.

### III. ICWA OVERVIEW

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

#### A. Who Is An Indian Child?

California law defines an "Indian child" as an unmarried person up to the age of 21 who:

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

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

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

- whether or not the Indian child was in the physical custody of an Indian parent or Indian Custodian at the commencement of a child custody proceeding;
- whether or not parental rights have been terminated;
- whether or not the Indian child has lived on an Indian reservation; or
- whether or not any party objects to involvement and connection with the child's tribal community.

#### **B. When Does ICWA Apply?**

- An Indian child may be placed in foster care as a result of removing the child from his or her parent or Indian Custodian and the parent or Indian Custodian cannot have the child returned upon demand;
- the Indian child may be adopted and parental rights would be terminated;
- parental rights have been terminated;
- an Indian child may have a legal guardian appointed by the order of the court;
- it is recommended that an Indian child be placed in a pre-adoptive or adoptive placement; or
- an Indian child is involved in an involuntary child custody proceeding.

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

- notify the child's tribe(s), parents, and the Indian Custodian(s) of the child custody proceeding;
- provide active efforts to the family;
- identify a placement consistent with ICWA preference provisions; and
- work actively to involve the child's tribe(s) and the child's parents or Indian Custodian in the proceedings.

#### **IV. INQUIRY & IDENTIFICATION OF INDIAN CHILDREN**

Inquiry for American Indian heritage should be done for every family served by Family, Youth and Children's Services (FY&C) during initial and on-going contact with all families, particularly when placement is imminent. A child should be identified, at least provisionally, as an "Indian Child" whenever a parent identifies him or herself or the minor as a member of a tribe or when other factors indicate such membership or eligibility for membership. This approach does not require that the ICWA procedures be applied simply because there is a statement that the child may have Indian ancestry. As stated under the Act, "Indian child" status requires that the minor have membership, or eligibility for membership, in an Indian tribe and a biological parent who is a member. The fact that the child may have a distant Indian ancestor, in and of itself, is not sufficient to meet this standard or to give the court a reason to know the child is Indian.

**All agency social workers have an affirmative and ongoing duty to inquire if a child is an Indian child.**

## **A. Role of the Social Worker in Identifying an Indian Child**

### **1. Inquiry to Family Members**

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

- a. A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family provides information suggesting the child is a member of a tribe, or eligible for membership in a tribe, or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe;
- b. The residence or domicile of the child, the child's parents, or Indian Custodian is in a predominantly Indian community;
- c. The child or 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 Sonoma County Indian Health Project (SCHIP), Tribal TANF Programs, Tribal Head Start Programs, or Indian Child & Family Preservation Program (ICFPP).

If there is reason to believe the child is Indian, investigation should include interviews of parents, extended family members, and tribal representatives regarding a child's Indian status in order to gather the lineal and other information required in ICWA Form 030. (Appendix , p. vi.) Probable cause to believe the child may be Indian includes statements regarding Indian heritage from a tribe or Indian organizations, as well as whether the child and/or family received services from Indian service providers. (CRC, Rule 5.481(a)(5).)

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

Questions can be placed in the context that such a background may make the family eligible for special services and provide procedural protections to which they otherwise might not be entitled. The worker should also be alert for other clues regarding Indian ancestry that would prompt further inquiry, e.g., involvement with an Indian health program or other Indian service providers. Intake or Emergency Response social workers must complete ICWA Form 010(A) (Appendix, p. iv) which shall include identification of all persons questioned, with every petition that is filed in dependency court. **Use of Family Tree forms strongly recommended. (Appendix, pg. iv-v.)**

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

**Juvenile Court parties should be aware that any person who knowingly falsifies or conceals facts regarding a child’s Indian status shall be subject to court sanctions. (Welf. & Inst. Code § 224.3 (e).)**

When Indian ancestry is identified, the worker should enlist the assistance of the parent(s), other relatives and tribes in completing Form ICWA-020 (Parental Notification of Indian Status) and ICWA-030 (Notice of Child Custody Proceedings for Indian Child) (Appendix, pp. vii-xvii). Form ICWA-030(A) is then to be used to confirm Indian status with the tribe and/or Bureau of Indian Affairs (“BIA”) and to document the worker's efforts in obtaining background information from the family.

Once a minor is identified as an Indian child, or the social worker has reason to know\* that the child may be Indian, the obligations will be different depending upon whether a child is or may be removed from his/her family.

- For voluntary family maintenance and emergency response workers: it means early inquiry into possible tribal affiliation, contacting and communicating with the tribal representatives, and making and documenting referrals to Indian providers to try to prevent the breakup of the Indian family. (See page 9, “Inquiry to Family Members”.) There is no prohibition to workers communicating with tribal representatives to discuss possible tribal affiliation and coordination of services in cases where there is reason to believe that an Indian child is involved. In fact, **such communication is required** in cases involving Indian children. (25. U.S.C. § 3205)
- If a child is removed, it has implications for Court Services, Family Reunification and Permanency Planning workers for notice, collaboration with tribes, services, and placement.

To understand the overall implications of identifying a minor as an Indian child, a chart of the ICWA requirements is included in Appendix, p. xxiv-xxv.

## 2. Social Worker’s Continuing Duty to Identify Indian Children

Inquiry into a child’s tribal status is not limited to the beginning of a case. A court finding that ICWA is not applicable does not fully relieve the social worker’s ICWA concerns. Social workers have “an affirmative and continuing duty to inquire” whether a child for whom a petition has been filed is or may be an Indian child. (Welf. & Inst. Code § 224.3 (a).) If the social worker subsequently receives information that provides a “reason to know” that an Indian child is involved in the proceedings, the worker has a continuing duty to investigate and provide notice to the tribe(s) and court. (Welf. & Inst. Code § 224.3 (f).)

**If new information is obtained** regarding the child’s Indian heritage, the tribe, BIA and Secretary of the Interior must be re-noticed with the new information. This must be done even if the court already found that ICWA does not apply.

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\* See page 8, section IV.A.1.  
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## **B. Importance of Identifying Indian Children**

### **1. Access to Appropriate Prevention and Intervention Services**

Identification of Indian children is not only a legal obligation but may be critical in providing effective child abuse prevention or intervention services to a family. Discovery of a family's Indian background may result in access to free or low-cost culturally-appropriate resources and help create a support network that can truly prevent the breakup of the Indian family. For example, Indian identification may lead to finding an extended support system that can be used as a basis for family group conferencing or help ensure the child's continued safety. It may also provide important support and self-esteem building opportunities for court dependents and provide a foundation for providing "active efforts" to meet the legal requirement.

### **2. Placement with Indian Custodian**

One important resource under the ICWA is that, in lieu of filing a petition, a child may be placed with an Indian Custodian. An Indian Custodian is an Indian person designated by a tribe or parent who is appropriate for assuming temporary physical care or custody over an Indian child. (25 U.S.C. §1903(6).) The Department may work with a tribe or parent to identify such a person for possible pre-filing or pre-disposition placement to protect an Indian child at high risk of abuse or neglect and such communication is encouraged in cases involving Indian children. This may be particularly useful in situations where a baby otherwise would be detained following birth at a hospital or for children where there are limited placement options. In exploring this avenue, the worker should seek a formal resolution from the tribe recognizing the person as the child's Indian Custodian and as the preferred placement.

### **3. Inter-Dependence of Department Units to Protect Child**

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

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

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

**If a child was not properly identified as Indian, or if ICWA requirements were not followed, the entire dependency proceedings may be invalidated -- no matter where the case is in the dependency process.** (25 US Code Section 1914; WIC 224(e); See **Invalidation** on p. 34.)

#### 4. **Enrollment of Child with Tribe**

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

### **C. Identification Checklist**

- Asked parents, child, and relatives regarding Indian background;
- Inquired about Indian status and compensated for the possible social disincentives for self-identifying by letting the person know of potential service benefits and procedural protections;
- Noted Indian ethnicity in CWS/CMS and on petition;
- Worked with parents and relatives to obtain completed ICWA Form 020 (see Appendix p. vii);

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<sup>\*</sup> In this protocol, the term "ICWA advocate" is used to refer to a tribe's representative; some tribes may use a different title.

- Checked CWS/CMS and/or Appendix, p. xviii for local tribal addresses and/or the Federal Register website (see Appendix, p. iii) for non-local tribal and BIA addresses;
- Sent completed form ICWA-030 (Appendix, p. viii-xvii) to appropriate tribes and/or BIA for confirmation of Indian status;
- Contacted tribe, service and/or ICWA representatives, if known, to obtain information on membership status;
- Documented all efforts to determine Indian status in case notes;
- Obtained letter confirming or rejecting tribal membership status from each identified tribe and/or the BIA; and
- ICWA Form 030, proofs of service, and all tribal/BIA responses filed with the court.
- Obtained copy of child's birth certificate.

## V. NOTICE

### A. **Proper and Timely Notice is Required**

Proper notice is a critical step to ensure ICWA compliance and often is a source of error identified by appellate courts. **Lack of appropriate ICWA notice is the most common reason that dependency cases are overturned or remanded on appeal.**

The filing of a dependency petition for a minor whom the Department has "reason to know may be an Indian child" triggers the ICWA notice requirements. Notice of the proceedings and of each subsequent hearing must be made to the parents, Indian Custodian(s), and tribe.

1. **Specific Notice Requirements**To meet the ICWA notice requirement, ICWA Form 030 (Appendix, p. viii-xvii) must be sent to the relevant tribe(s), the BIA and the Secretary of the Interior for every hearing until the Court makes a determination as to whether ICWA applies. For confirmed ICWA cases, notice will be by certified mail using the regular Judicial Council notice forms.

Notice shall be by personal service or **registered or certified mail, return receipt requested** to the parent, Indian Custodian, and the tribe. (25 U.S.C. §1912; CRC Rule 5.481(b)(1); Welf. & Inst. Code § 224.2(a).)

- a) Addressed to the tribal chairperson unless another agent is designated for service (see CWS/CMS and/or Appendix, p. xviii-xxi for local tribal addresses and/or the Federal Register website (see Appendix, p. iii) for non-local tribal and BIA addresses; [NOTE: be aware that the Federal Register list of tribal contacts and the State website becomes outdated quickly. If the social worker knows of a different address/contact person, notice must be sent to both addresses and worker should call tribe to confirm.]);
- b) To the tribe's attorney once counsel has appeared in the case;

- c) To all tribes to which the child may be a member;
- d) To the BIA in Sacramento if the tribe cannot be determined or located (see Appendix, p. ii, for address); and
- e) To Secretary of the Interior (Appendix, p. ii.)

The notice provided and responses obtained from tribes must be submitted to the court and all parties and discussed in a separate ICWA section in the court report until the court has made an ICWA determination. A copy of the petition (or court report for review hearings), along with the child's birth certificate, if available, must accompany the notice. (25 C.F.R. §23.11; (Welf. & Inst. Code § 224.2 (a) (5).) A **sample** completed notice form is attached at Appendix, pp. vi-xv.

Although it is sometimes cumbersome, the forms must be complete. The ICWA Form 030 includes listing all relatives on both sides, even if non-Indian. If the family history is not available, this should be clearly stated on the ICWA Form 030. Each relevant tribe must be appropriately served. This is a critical step in the process as, without effective ICWA notice, the Act's requirements and purposes cannot be satisfied. County Counsel should be consulted if there is any question regarding notice issues.

## **2. Notice Requirements if Tribe Unknown**

If the tribal affiliation is unknown, the ICWA 030 should be sent to the BIA Sacramento Area Social Services Director and the Secretary of Interior. Tribe, BIA and Secretary of Interior contact information is contained in Appendix, pp. ii & xviii-xxi for local tribal addresses and/or the Federal Register website (see Appendix, p. iii) for non-local tribal and BIA addresses; (but note that the Federal Register and State contact lists become outdated quickly; it is always advisable to check with the tribe to confirm address/contact person.) If notice from a tribe has been returned, the Social Worker will need to call the tribe to obtain a correct mailing address. If tribe(s) request additional information, the Social Worker will need to contact the tribe in writing to determine what additional information is needed. When time constraints require immediate response, document all other communications. File all correspondence with the court. If a dependency petition is filed, the notice of proceedings requirements that must be followed are discussed below. **A determination by a tribe that a child is, or is not a member, or eligible for membership is conclusive.** (Welf. & Inst. Code § 224.3 (e).)

## **3. Notice Requirements if There May Be More Than One Tribal Affiliation**

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

notice) of all tribes with which the child is or may be affiliated until the court determines which will be the ICWA tribe for purposes of the dependency proceedings.

## **B. Role of Workers in Providing Notice**

- 1. Voluntary Family Maintenance/Emergency Response Responsibilities** - The units working with families and responding to reports of child abuse and neglect prior to the filing of a petition generally will not be required to provide notice unless a worker is assisting in filing a petition and performing the initial removal investigation. If you are responding to a referral and learn that the family has past CPS history, it is important to check the old file(s) to see if an ICWA finding was made in the earlier case. The ER worker should call any known tribe(s) to inform the tribe(s) of the detention hearing. The worker should also contact all relevant tribes to determine the minor's (and parent's) membership status and what services may be available to the Indian child or family. Social workers **must** document all efforts to provide notice to tribes. **The work that a VFM or ER worker performed in trying to identify a child's Indian heritage is critical in assuring that effective notice is made. Awareness of a child's potential tribal membership allows for early joint case planning between the Department and the tribe's ICWA worker to see what tribal resources may be utilized, ensures that the family is referred to culturally-appropriate services, and that timely tribal notice is provided if there is a later removal. This is essential to ICWA compliance and providing active efforts.** (See below, Section VII.)
- 2. Court Services Responsibilities** - The initial notice requirement will usually be the responsibility of the **Court Services** unit that drafts the petition, performs the initial investigation and prepares for jurisdiction and disposition hearings. **ICWA Form 030 (Appendix, p. viii-xvii) must be used to ensure the notice requirements are met and should be sent within 10 days of the filing of the petition. (Welf. & Inst. Code § 224.2 (d).) (Use of Family Tree forms strongly suggested to help prepare ICWA 030. Appendix, p. iv-v.)** In addition, the **Juvenile Dependency Petition** must be attached (and the child's birth certificate when available) to the notice with the appropriate ICWA petition sections marked. **On the ICWA 030, do not leave any spaces blank and do not put N/A if the information is unknown. Rather, if unknown, write in the applicable space, "No Information Available" or "See Additional Information Below."** In the **Additional Information** box, list the names of all persons who were interviewed.

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

3. **Family Reunification Responsibilities** - When the possibility of Indian ancestry is raised following the disposition hearing, the FR worker will be responsible for investigating tribal affiliation and ensuring that the proper tribal contact is located and notified of proceedings. As the tribe is required to be properly noticed of each hearing, the FR worker will be responsible for ensuring that notices are timely sent throughout the reunification process even if the initial contacts were made by a Court Services worker. It generally will be the responsibility of the FR worker to follow-up and ensure that written confirmation is received from each contacted tribe (and/or BIA) to confirm or deny a child or parent's membership status and to ensure court determination of ICWA status. If proper ICWA notice was provided by the Department, and neither a tribe nor the BIA has provided a determinative response within 60 days after receiving the notice, the Department should ask the court to determine whether ICWA applies. (Welf. & Inst. Code § 224.3 (e) (3).)
4. **Permanency Planning Responsibilities** - When the possibility of Indian ancestry is raised following termination of reunification services, the PP worker will be responsible to complete the form ICWA-030, locate the appropriate tribal representative(s), and provide notice of the proceedings, documenting all efforts and contacts made regarding ICWA compliance. If the court determines that the ICWA applies, the PP worker will be responsible for ensuring that timely notices are sent to a designated tribe throughout the life of the dependency, even if the initial contacts were made by another unit.

#### C. Notice Checklist

- Notice provided to tribe(s), BIA and Secretary of Interior and parent and/or Indian Custodian(s) when petition filed by using ICWA Form 030;
- Petition with appropriate sections marked and birth certificate, if available, attached to ICWA Form 030 (*see* sample at Appendix, p.viii-xvii);
- Notice provided by **certified mail, with return receipt requested**;
- Notice sent to tribal representative(s), BIA, and Secretary of Interior as designated in Federal Register/State website and/or CWS/CMS;
- Notice efforts and responses documented in file and in court reports;
- Notice requirements met for each hearing;
- Notices (including ICWA Form 030), along with proofs of service and tribal responses, are filed with the court; and
- Court makes appropriate ICWA notice findings.

## VI. RIGHTS OF TRIBES

### A. Determination of Eligibility

It is the exclusive determination of the tribe whether a child is or is not eligible to be a tribal member. (See section IV.B.4 above) Depending on the tribe's membership laws, enrollment may or may not be necessary for the child to be considered a member.

There is no single way to determine Indian heritage by race, physical characteristics, surname, or residence, although these factors might contribute to triggering ICWA procedures by leading the worker to have a reason to know the child may be Indian. Whether a child is Indian is not a racial determination but a question of political status.

Indian tribes are recognized as sovereign entities existing within the United States. Tribes and the U.S. government have a "political" relationship as between two nations, not a relationship based upon racial classification. Within tribes, membership is determined in a variety of ways, with specific requirements varying from tribe to tribe. Ultimately, only the tribe can decide who is a member and that determination is binding. (Welf. & Inst. Code § 224.3 (e)(1).)

## **B. Rights of Federally-Recognized Tribes**

The ICWA states, "In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian Custodian of the child and the Indian child's tribe shall have the right to intervene at any point in the proceeding." (25 U.S.C. §1911(c).) An intervening tribe may fully participate as a party to a proceeding. The Indian tribe has the following rights:

- the Indian child's tribe and Indian Custodian have the right to intervene at any point in an Indian child custody proceeding;
- exercise tribal jurisdiction by asking that the case be moved to tribal court as defined by the tribe;
- be notified about the Indian child custody proceeding;
- ask for up to 20 extra days to get ready for a hearing except the detention hearing;
- deny a parent or Indian Custodian's request for the case to be moved to tribal court as defined by the tribe;
- review documents about the case that the court has on file (if tribe intervenes as a party, tribe is entitled to copies of all documents);
- examine records kept by the State on the placement of tribal children;
- exercise option of Tribal Customary Adoption as the permanent plan for an Indian child;
- assert certain tribal laws or customs to the Indian child custody proceeding, e.g. definition of "extended family";
- assert a different order of placement between the categories of placement preferences;
- submit written reports and/or provide recommendations to the court;
- perform other duties as requested or approved by the court.

The Interstate Compact on the Placement of Children (ICPC) does not apply to any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court.

## **C. Rights of Non-Federally-Recognized Tribes**

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

Non-federally-recognized tribes are not entitled to notice of the proceedings. However, under current state law, the court may permit the child's non-federally recognized Indian

tribe to participate in the child custody proceeding upon request of the tribe. The court may limit participation to the tribe with which the child has the most significant contact.

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

A list of non-federally-recognized tribes can be located at: [www.kstrom.net/isk/maps/usmapindex.html](http://www.kstrom.net/isk/maps/usmapindex.html) - click on the state for a list of non-federally-recognized tribes.

To obtain the address or phone number of the non-federally-recognized tribe, contact the individual State Indian Affairs Offices at: [http://w1.paulbunyan.net/~giic/pages/office\\_directory.html](http://w1.paulbunyan.net/~giic/pages/office_directory.html)

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

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

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

#### **D. Other Eligibility Issues**

1. If an Indian child is a member of more than one federally-recognized tribe or is eligible for membership in more than one tribe but is not a member of any of them, the court shall make a determination, in writing together with the reasons for it, as to which tribe is the Indian child's tribe for purposes of the Indian child custody proceeding. (Welf. & Inst. Code § 224.1(d).) The tribe with which the child has more significant contact should be designated as the Indian child's tribe. The social worker shall inform the court of the following factors in the court report:
  - a) Length of residence on or near the reservation of each tribe and frequency of contacts with each tribe;
  - b) Child's participation in activities of each tribe;
  - c) Child's fluency in the language of each tribe;
  - d) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes;
  - e) Residence on or near one of the tribes' reservation by the child's relatives;
  - f) Tribal membership of custodial parent or Indian Custodian;
  - g) Interest asserted by each tribe in response to the notice sent; and
  - h) The child's self-identification.

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

## **VII. ACTIVE EFFORTS**

Any party seeking to effect a foster care placement has the burden to demonstrate that "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful." (25 U.S.C. §1912(d).) Actions to provide active efforts "must include... attempts to use the available resources of extended family members, the tribe, tribal and other Indian social service agencies, and individual Indian care givers." (Cal. Rules of Court, Rule 5.484(c)(2); Welf. & Inst. Code § 361.7 (a)-(b).)

### **A. Joint Case Planning/Active Efforts Defined**

Joint case planning is the ongoing collaboration between the Department and tribes to develop an individual case plan for each family with preservation and/or reunification as the goal. Active efforts require **early consultation with the child's tribe in all case planning decisions**. One of the first things workers must do is identify the tribally-designated representative responsible for case planning for the tribe at the earliest possible point, contact that representative and begin to work with her/him. The case plan and services for an Indian child shall be delivered in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts is assessed on a case-by-case basis.

On a practical level, what "active efforts" means is that any time a worker has reason to know that a minor may be an Indian child, every effort must be made to refer the family to culturally-appropriate services. Services are available through Indian service providers. In addition, coordination by the social worker of efforts by extended family members and the tribe to assist the family (e.g., facilitate visitation or assist in housing) also constitute active efforts. Early collaboration between the social worker and the tribe's ICWA advocate is the best way to identify appropriate services, so the worker should consult and involve the tribe's ICWA advocate in each stage of the proceedings.

**Joint case planning occurs when the parents, Indian Custodian(s) and tribal ICWA advocate are actively involved with the social worker in the development of the case plan.** In addition, resources of family members, tribal programs, and traditional Indian services such as healing circles should be explored with agency and/or tribal representatives. Indian service referrals should be made **and documented** for both parents, even if one is non-Indian and/or the parent(s) does not have any connection to their tribe or Indian heritage. Alternatively, non-Indian referrals should be provided if requested by the parent. The child should also be provided opportunities to engage in Indian programs, services, and events as part of the Department's active efforts and child's case plan. The **Indian Service Providers** (*see* Appendix, pp. xix-xx) should be helpful in making culturally-appropriate referrals, and programs operated by Sonoma County Indian Health (SCIHP), Consolidated Tribal Health Project (CTHP), Round Valley Indian Health, Indian Child and Family Preservation Program and tribes should always be considered.

## B. Role of Workers in Joint Case Planning/Providing Active Efforts

1. **Emergency Response/Voluntary Family Maintenance Responsibilities** – Intake workers must ask the reporting party whether there is Native American heritage for the family. Information about ICWA status must be included in the Screener Narrative section of CMS/CWS referral. If there is Native American heritage, the Intake worker is to complete CMS/CWS Blue Tab ID pages to reflect **known** tribal affiliation for each family member. In the first meeting with the family, the ER worker needs to ask if the children may be Indian children. **If a tribe is identified, the worker must immediately contact the tribe and begin to work with a tribal representative regarding case planning and placement, if that is an issue.** If information is received about possible Indian heritage, the worker needs to investigate further by interviewing family members or checking with tribal programs in order to determine if the child is an Indian child. All efforts to locate a tribe or extended family members must be documented, as they are part of active efforts.

If the worker has reason to know<sup>\*</sup> an Indian child may be involved, the tribe should be contacted and, through collaboration with the tribal representative, the family should be referred to tribal and local Indian service providers prior to any potential removal of the child, assuming there is no need for immediate removal. A tribe should be identified by the steps outlined above (Inquiry, Section IV) but, at a minimum, the worker should attempt to identify tribal resources through the tribe's ICWA advocate and families should be directed to appropriate services through the Sonoma County Indian Health Project (SCIHP), Consolidated Tribal Health Project (CTHP), Round Valley Indian Health and Indian Child and Family Preservation Program, and various other tribal services. (See List of Indian Service Providers, Appendix, pp. xix-xx.) All referrals must be documented in the case file. At the closure of a case, ER workers will include the ICWA status in the Investigation Narrative, including the tribal affiliation. If there is Native American heritage, ER workers will update the CMS/CWS Blue Tab and/or ER Supervisor will be responsible to review this step prior to final transfer or closure of referral.

When a case goes to Voluntary Family Maintenance (VFM), the VFM worker will review the Investigation Narrative to determine ICWA status. If ICWA status is unclear, the VFM worker will do further investigation. If ICWA applies, the VFM worker will determine whether the ER worker made contact with the tribe and will either continue the collaboration with the tribe or contact the tribe to begin joint case planning. Initial notification to the tribe is to be made by phone and email. The VFM worker should request that the child's tribe convene traditional and customary support, provide appropriate tribal resolutions and determine what services are available through the tribe. **Within the first 30 days, the VFM worker will make arrangements with the tribal representative to collaborate and meet with the family prior to the development of a VFM case plan.** In developing the case plan, the worker should involve the parents, Indian Custodian, tribal rep, and any Indian service providers. Traditional Indian services such as healing circles, sweat lodges and ceremony should be considered for inclusion in the case plan. The VFM worker must document all

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<sup>\*</sup> See page 8, Section IV.A.1.  
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contacts/attempted contact with the tribe in CWS, as well as documenting all services offered or provided by the tribe.

If it appears that it may be necessary to file a petition under W & I Code section 300, the VFM worker should include the tribe in that decision-making process, including participation with the worker in the Structured Decision Making (SDM) assessment of safety, risk and consideration whether a safety plan could be implemented to maintain children safely in the home. If the decision relates to an emergency situation, the tribe should be notified as soon as possible and, if time permits, alternatives to filing a petition should be explored, such as establishing an Indian Custodian for the child. The worker should consult with extended family members to identify family structure and family support, services should be provided to extended family members to allow them to be considered for placement, and visitation should be arranged, including transportation and supervision. Often, the tribe can be very helpful in facilitating visitation.

**If active efforts/joint case planning have not been provided prior to removal or, at a minimum, immediately following removal, an out-of-home disposition may not be possible regardless of the severity of the circumstances that led to the filing of a petition.**

- 2. Court Services Responsibilities** - Immediately upon filing the petition, the parents should be referred or re-referred to Indian service providers and the investigator should determine whether the ER or VFM worker already contacted and was working with the tribal representative on joint case planning. If such contact was already begun, the investigator should continue the collaboration with the tribal representative around placement and joint case planning. If contact has not yet been made, the worker should take all information obtained during the detention hearing about possible Indian heritage and, if the tribe is known, provide notice and immediately contact the tribe. If the tribe is unknown, then notice must be completed. (See Notice, section V, above.)

The court report must contain an ICWA section and include information about notice and all referrals that were provided to the parents by **Court Services, VFM or ER**, including help solicited from extended family members and efforts to collaborate with the tribe on joint case planning and placement decisions. **Where applicable, the report should clearly state when the case involves an emergency removal and the facts supporting the potential imminent harm to the child if left with the parents.** In addition, the service plan (and court report) should specifically state that, whenever possible, services will be provided by Indian programs and describe what contact and joint case planning has been attempted/completed with the tribe's ICWA worker. Traditional Indian services such as healing circles, sweat lodges and ceremony should be considered for inclusion in the case plan. **Since the timeframes are short for completion of the investigation, the worker must contact the tribe as early as possible in order to involve the tribe in developing the case plan. In addition to engaging in joint case planning, the social worker should discuss with the Indian child's tribal ICWA advocate concurrent planning and the option of Tribal Customary Adoption.** (See section VIII(B)(3) below.)

3. **Family Reunification and Court-Ordered Family Maintenance Responsibilities -**  
The FR/FM worker should continue the work started by ER, VFM, or Court Services with the tribal representative on joint case planning, or, if joint case planning has for some reason not yet started, contact the tribe immediately and get joint case planning started. The worker should request that the child's tribe convene traditional and customary support, provide appropriate tribal resolutions and determine what services are available through the tribe. The worker should make referrals for the parents and the child and follow up with Indian service providers and tribal representatives throughout the reunification/maintenance period (Indian services should also be extended to a non-native parent of an Indian child). Child welfare workers have a continuing duty to determine if a dependent has Indian heritage. **If it is discovered for the first time during reunification that there is reason to know that an Indian Child may be involved, appropriate notice must be given and the service plan should be modified to state expressly that Indian service providers shall be utilized whenever possible and new referrals should be made to Indian service programs.** As in the beginning of a case, once the worker knows the tribe, the tribe should be contacted immediately and invited to engage in joint case planning with the worker. Sometimes it may be beneficial to make joint referrals, e.g., for parenting classes both to the California Parenting Institute (CPI) and the Sonoma County Indian Health Project (SCIHP), so parents can choose what schedule and program best meets their needs. Social worker must document joint referrals and choice made by parent(s).

Indian resources may be available to assist with transportation for and supervision of visits. Culturally-sensitive programs also should be investigated and accessed in local or state correctional facilities whenever a parent becomes incarcerated. The child's case plan should also ensure that the minor is provided opportunities to participate in Indian-based programs and tribal/Indian community events while in placement. **As part of joint case planning, the social worker should meet with the Indian child's tribal ICWA advocate to discuss concurrent planning and the option of Tribal Customary Adoption.** (See section VIII(B)(3) below.) **All referrals, Indian services utilized, child's involvement in Indian programs, work with extended family members and joint case planning with the ICWA advocates should be documented in the case file and court report.**

4. **Permanency Planning Responsibilities -** Workers should be in contact with tribal representatives and ensure that the child is being offered the opportunity to engage in relevant Indian-based programs and tribal/Indian community events. **The social worker should meet with the Indian child's tribal ICWA advocate to discuss concurrent planning and the option of Tribal Customary Adoption.** (See section VIII(B)(3) below.) If a parent is offered additional reunification services after a permanent plan is established, referrals should be provided to Indian-based programs and resources. **All Indian-related activities and referrals should be documented in court reports.**

**If active efforts have not been provided either by the VFM or ER worker prior to removal or, at a minimum, by the Court Services worker immediately following removal, an out-of-home disposition may not be possible regardless of the severity**

**of the circumstances that led to the filing of a petition.** Similarly, if active efforts were not made by the **FR/FM** worker, parental rights cannot be terminated.

The following are **suggested** best practice guidelines for providing active efforts:

- Identification and participation of tribally-designated representatives in joint case planning as early as possible;
- Providing access to both tribal and non-tribal services, including but not limited to financial assistance, food, housing, health care, and transportation. Services should be on-going throughout the case to assist families in accessing and engaging services;
- A request to the Indian child's tribe to convene traditional and customary support, provide appropriate tribal resolutions and determine what services are available through the tribe;
- Request that the ICWA advocate evaluate the family's circumstances and assist in developing a case plan that utilizes tribal and Indian resources;
- Consultation with extended family members to identify family structure and family support that can be provided by extended family members;
- Providing services to extended family members to allow them to be considered for placement if out-of-home placement becomes necessary;
- Arranging visitation, including transportation and/or supervision.

Social workers shall provide active efforts to families that may be of American Indian descent until eligibility/membership is determined in writing by the tribal representative. If eligibility/ membership is determined, active efforts must continue. If eligibility/membership is denied, active efforts are no longer necessary after the court has ordered that ICWA does not apply.

### **C. Active Efforts Checklist**

- Worker has been in regular contact with tribe's ICWA representative and has invited tribal rep to participate in joint case planning from the earliest possible time, including an early discussion with the tribe about Tribal Customary Adoption;
- Service plan specifically states that services are to be provided by Indian programs whenever possible and worker has provided culturally-appropriate referrals;
- Worker investigated what extended family members, Indian services or tribal resources are available to assist a particular family. (*see Tribal List & Indian Service Providers*, Appendix p. xviii-xxi) Child's case plan specifies efforts made to provide the minor opportunities to be involved in Indian-based programs and tribal/Indian community events while in placement;
- Specific referrals have been made to Indian resources for both the parents and child (even if some members of family are not Indian or connected to a specific tribe);
- If parent/Indian Custodian is incarcerated or institutionalized, **Court Services** and/or **FR** worker investigated what Indian groups are operating in the institution and made appropriate referrals for the inmate;
- All referrals, assistance by tribe and family members, and participation in Indian programs are documented in the case file and court report, if applicable.
- Attach joint case planning notes, if applicable, to the court reports or in the prima facie.

## **VIII. PLACEMENT PREFERENCES**

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

In addition, the law compels collaborative work with the tribe to find an appropriate placement by requiring that child welfare workers use tribes and tribal services and agencies, when available, to fulfill the placement priorities. (Welf. & Inst. Code § 361.31 (g).) **ICWA compliance is best achieved, and the family most effectively served, when collaboration, joint placement and case planning decisions are made by the county social workers and tribal/advocates together, beginning at the earliest possible time. The social worker must carefully document in the court report all efforts to work with the tribe and secure a placement consistent with the applicable preferences.**

### **A. Foster Care**

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

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

#### **1. Order of Placement Preferences**

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

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

## **2. Modification of Priorities**

### **a. Tribal Modification of Statutory Placement Preferences**

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

### **b. Court Finding of “Good Cause” to Modify the Preferences**

If a tribe, through formal resolution, does not specify that a particular non-preferential placement is approved, the worker must demonstrate that 1) active efforts were made to place the child with a family committed to enabling the child to have extended family visitation and participation in Indian tribal/community cultural events; and 2) that "good cause" exists for modifying the preferences. (Welf. & Inst. Code § 361.31 (h)-(j).) The "good cause" finding must be documented in the court report and adopted by the court.

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

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

## **3. Tribally-approved home**

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

to tribally-approved homes. The only exception to this is the requirement for criminal records checks.

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

#### **4. Tribally-designated home**

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

### **B. Adoptive Placement**

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

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

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

## **1. Adoption Placement Preferences**

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

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

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

## **2. ICWA Conventional Adoption Exception**

Recent legislative amendments have created a new exception to termination of parental rights for Indian children who may otherwise be adoptable. (Welf. & Inst. Code § 366.26 (c)(1)(B)(vi).) This exception applies when the court finds there is a compelling reason for determining that termination of parental rights would not be in the best interests of the child based on the following:

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

However, when appropriate, the placement preferences of the child and parent shall also be considered.

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

## **3. Tribal Customary Adoption**

Tribal Customary Adoption (AB 1325) became operative in California on July 1, 2010. Tribal Customary Adoption (TCA) is considered an agency adoption, by and through the tribal customs, traditions, or laws of an Indian child's tribe, which transfers the custody of a child to the care and protection of adoptive parents **without** the termination of parental rights. (W&IC §366.24) (See TCA Flow Charts, Appendix, pp. xxii-xxiii.)

Briefly, once a child is declared a dependent and an ICWA eligible child and the child's tribe is identified, the Department shall inform the tribe that TCA is a permanency option. It is up to the Indian child's tribe to select a permanent plan of TCA. The tribe informs the Department either in writing or orally of its interest to pursue TCA. The discussion whether to pursue TCA and discussions with the tribe about TCA should begin at the earliest possible time. The Department obtains information and begins discussions with the tribe.

The Department addresses the appropriateness of TCA as a permanent plan in the dispositional report to the court. (W&IC §358.1) **Each tribe maintains the authority and discretion to disclose its tribal customs, laws, traditions, ceremonies and significant history to the Department.**

The key components of TCA are found in W&IC §366.24 and requires true consultation between the Department and the Indian child's tribe. **Consultation means more than just "checking in"; it means the creation of a partnership between the Department and the Indian child's tribe as soon as the child is declared an ICWA-eligible child.** Consultation shall include verbal and written communication, in-person meetings, team decision making, family group conferencing; all information shall be documented in foster care and adoption case records and/or in the case notes section of CWS/CMS.

**TCA allows for adoption assistance funding, without the termination of parental rights.**

The following is a guide for the stages of TCA – **this is merely a guide** and should not be substituted for consultation with the Indian child's tribe and county counsel.

- a. Disposition:
  - Family Reunification: includes early concurrent permanency planning
  - Department and the Indian child's tribe working together
- b. Status Review Hearings:
  - Department obtains relevant information to update the court on the likelihood the child will be adopted and if TCA continues to be the appropriate plan;
  - If no family reunification services are offered or if those services are terminated, the first W&IC §366.26 hearing is set;
  - The Department will receive written confirmation from the Indian child's tribe of its selection of TCA as the permanent plan for the child;
  - The Department completes the written assessment of the child;
  - The case is then referred to the Indian child's tribe to complete the W&IC §366.24 process.
- c. W&IC §366.24 Process:
  - At the first W&IC §366.26 hearing, a 120-day continuance may be granted to afford the Indian child's tribe or the designee and the Department/State Adoptions sufficient time to complete the home study, the Adam Walsh criminal background check, and for the Indian child's tribe to complete the Tribal Customary Adoption Order.
- d. Home Study:
  - The home study can be completed prior to the first W&IC §366.26;
  - The Indian child's tribe informs the Department/State Adoptions whether it will conduct its own home study or designate an adoption agency;

- If the Indian child's tribe elects to conduct its own home study, the Department will receive updates on the home study from the Indian child's tribe as to any problems or concerns and the status on completion and will forward to State Adoptions;
  - If the Indian child's tribe designates an adoption agency to complete the home study, the Indian child's tribe requests the designee in writing;
  - If State Adoptions is the designee, State Adoptions works with the Indian child's tribe to complete the home study and obtains final approval from the Indian child's tribe of the home study;
  - If another adoption agency is designated by the Indian child's tribe, the Department/State Adoptions will receive updates from the Indian child's tribe and the designee on the status of the home study and receives a final copy of the home study which has been either approved or denied by the Indian child's tribe.
- e. Adam Walsh Criminal Background Check:
- If the Indian child's tribe conducts its own home study, State Adoptions performs the Adam Walsh level criminal background check. State Adoptions shall send a letter to the Indian child's tribe indicating the date the background check was done and the date the results were received. The letter shall indicate whether or not the individual received clearance or not;
  - If State Adoptions or a designee conducts the home study, State Adoptions or the designee shall perform the Adam Walsh level criminal background check. Again, State Adoptions or the designee shall send a letter to the Indian child's tribe indicating the date the background check was done and the date the results were received. The letter shall indicate whether or not the individual received clearance or not.
- f. Tribal Customary Adoption Order:
- The Indian child's tribe completes the Tribal Customary Adoption Order (TCAO) once the home study has been completed and approved by the Indian child's tribe and the Adam Walsh level criminal background check has been completed and is rendered clear;
  - The Department and State Adoptions will receive updates on the progress of the TCAO from the Indian child's tribe or legal representative. The Indian child's tribe does not have to disclose private ceremonies or customs used during this process.
- g. Continued W&IC §366.26 Hearing:
- The Indian child's tribe files the TCAO with the Superior Court. The TCAO is served on all parties and the Department and State Adoptions receive a copy of the TCAO and the home study. Seven days prior to the continued W&IC §366.26 hearing, the Department shall file and serve an addendum report which updates the Superior Court on the status of the home study and the TCAO. If there are any concerns they shall be raised and addressed prior to filing the addendum report;

- The Superior Court shall review the TACO and afford full, faith and credit to the TCAO. Once full, faith and credit is afforded to the TCAO, the adoptive placement will be completed by State Adoptions and the supporting documents and placement agreement shall be reviewed with and signed by the applicant. (See, Forms AD 512 and AD 907; all forms AD 558, 580, 907 have been modified by the Judicial Council to include TCA.)
- h. Post-Permanency Hearing Issues:
- Adoption Assistance payments will be provided to the applicant and all necessary documents shall be compiled by State Adoptions and signed by the applicants (see AAP-4, which has been modified to include TCA);
  - The adoption petition is filed with the Superior Court;
  - A final court report is filed and the Superior Court issues a final decree of adoption, inclusive of the TCAO;
  - The TCAO and the final court decree of adoption create the final order of adoption and the dependency is terminated. (See TCA Flow Charts, Appendix, pp. xxii-xxiii.)

### C. ICWA Placement Advantages

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

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

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

If there is reason to believe that the placement would not be a safe one, the county placement worker shall discuss the concern(s) with the tribe and allow for possible correction of the issue(s) of concern. The tribe may also contact the social worker to voice its concern for the child's safety in placement. However, licensing/approval requirements (e.g., the size of the home, the number of individuals residing in the home, whether more than two children share a bedroom) are **not** to be used as rationale for not placing an Indian child in a tribally-approved home. Ultimately, the final placement decision and responsibility is with the county child welfare services agency for determining the appropriateness of an Indian child placement.

The social worker must document all active efforts made to comply with the order of placement preference for Indian children in CWS/CMS - Contact Note/Delivered Service Log and in the court report under the "Relative Placement Concurrent Planning" section.

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

#### **D. Placement Preference Checklist:**

- Parents and child asked to identify extended family members;
- Tribe, Indian advocacy and licensing groups (*see* Appendix p. xviii-xxi) were enlisted as part of the placement team to help with the search for extended family and other appropriate placement options;
- Extended family members have been contacted about possible placement and informed a) that relatives are first preference for placement, and b) that services and financial support may be available to support a placement;
- Social worker has begun collaborating at the earliest possible date with the tribe on placement and concurrent planning efforts;
- If the child's foster care or adoptive placement does not satisfy highest ICWA priority, case file and court report must document the diligent and active efforts by the Department to locate an appropriate alternative placement and, when possible, tribal resolution should be obtained approving proposed placement;
- If the child's foster care or adoptive placement is not within ICWA placement preferences, social worker must demonstrate "good cause" for modification.

#### **IX. QUALIFIED EXPERT WITNESS**

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

voluntarily. (Welf. and Inst. Code section 224.6.) County Counsel has the responsibility to retain and prepare the qualified Indian expert. If the permanent plan is to pursue a Tribal Customary Adoption, parental rights are not terminated and no expert witness would be required.

A qualified expert witness may include, but is not limited to, a social worker (a qualified expert witness **cannot** be a Sonoma County HSD employee when the Department is the party seeking the removal or termination of parental rights), sociologist, physician, psychologist, traditional tribal therapist or healer, tribal spiritual leader, tribal historian, or tribal elder or other persons so designated by the tribe. Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of an Indian child custody proceeding:

1. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices;
2. Any expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe;
3. A professional person having substantial education and experience in the area of his or her specialty.

The expert witness must be prepared to provide and the court must consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including the tribe's family organization and child-rearing practices. Therefore, it is critical that the social worker consult with County Counsel early in an ICWA case.

#### A. Disposition Hearing

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

## B. Termination of Parental Rights

Prior to termination of parental rights at the section 366.26 hearing, the qualified expert must provide evidence that demonstrates, beyond a reasonable doubt, that continued custody by a parent or Indian Custodian is likely to result in serious physical or emotional damage to the child and the expert must discuss the social and cultural standards of the Indian child's tribe. If the expert's report is received prior to the 366.26 hearing, it should be summarized in the report and attached to the report for all parties. If the permanent plan is Tribal Customary Adoption, parental rights are not terminated and no expert witness would be required.

If the prospective adoptive home is a non-Indian home, the social worker must document in the court report how the prospective adoptive parent is committed to enabling the child to participate in the cultural and ceremonial events of the child's tribe. If the Indian child is already in the prospective adoptive home, document in the court report how the caretaker has demonstrated this commitment by discussing family visits and participation in cultural and ceremonial events of the child's tribe.

## C. Waiver of Qualified Expert

A waiver of the requirement for expert testimony can be made by the tribe and the parents if the court finds that it is knowing, intelligent and voluntary. Cal. Rule of Ct., rule 5.484(a)(2). Such a waiver stipulation should be made in writing, signed by all parties and filed with the court.

Link to the Administrative Office of the Courts (AOC) California ICWA Expert Witness List:<sup>\*</sup>

<http://www.courtinfo.ca.gov/programs/cfcc/programs/description/jrta-ICWAExpertWitness.htm#northern>

## X. COURT REPORTS

The court report is the social worker's primary mechanism to communicate to the judge, the tribe, the parties, and the attorneys that the mandates of ICWA were followed. Due to the unique evidentiary status of social worker's court reports, the importance of a complete accounting of ICWA efforts cannot be overemphasized. As discussed in the relevant sections above, each court report should contain an ICWA section that, at a minimum, describes the date and outcome of the court's ICWA determination. When ICWA does apply, the section should discuss the efforts to engage in joint case planning with the tribe regarding provision of services and placement.

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<sup>\*</sup> Many tribes may disagree with this list of Indian experts. As a result, it is best to consult with the tribe when seeking an Indian expert.

### **Court Report Checklist:**

- Each report must contain separate sections that include a review of (a) notice and status of determination of whether minor is an “Indian Child”; (b) identification of joint case planning efforts with the tribe to provide services to the child and parents through Indian programs; (c) discussion of how placement fits within the ICWA placement preference; and (d) identification of Indian expert;
- Jurisdiction report designates whether an “emergency removal” was made and includes facts to demonstrate the child was in danger of imminent harm if left with parents or Indian Custodian;
- Service plan discussed in report makes clear that active efforts were/are being made and services were/are being offered through culturally-appropriate providers;
- Child, child’s parents and/or Indian Custodian’s involvement in and exposure to Indian-related programs is documented;
- Report reflects how placement preferences were followed or describes current efforts to find appropriate placement;
- ICWA findings and orders were used and County Counsel was consulted.

### **XI. INVALIDATION**

If ICWA notice is not proper, active efforts were not provided, or there was not a qualified ICWA expert witness or waiver thereof, any Indian child, parent, Indian Custodian, or tribe may petition the court to invalidate the proceedings. Invalidation is the legal remedy for violations of the ICWA and state law. If the minute order and the findings and orders indicate that the court heard the case without verification of the child’s Indian status, grounds for invalidation may exist and all parties should consult legal counsel.

## APPENDIX

### THE DEPARTMENT'S ONGOING DUTIES UNDER ICWA

Complete the following as applicable:

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

- b) Bureau of Indian Affairs (BIA)  
Pacific Regional Director  
Federal Office Building  
2800 Cottage Way  
Sacramento, CA 95825
  - c) Secretary of the Interior (required when the identify or location of the parents, Indian Custodians or the minor’s tribe **is known**)  
US Department of the Interior  
1849 “C” Street, N.W.  
Washington, D.C. 20240
  - d) Parents/Guardians;
  - e) Indian Custodian (if any).
7. If proper and adequate notice has been provided, and neither a tribe nor the BIA has provided a determinative response within 60 days after receiving that notice, and the return receipt was received signed by the properly named and designated tribal representative, the court may determine that the ICWA does not apply.
  8. Update new information received from the tribe(s) or the BIA in the Client Notebook on CWS/CMS.
  9. Code the child as “eligible”, “member”, or “not eligible” on the ICWA page of the child’s Client Notebook on CWS/CMS once the Letter(s) of Confirmation is/are received from the tribe(s).
  10. File all responses from tribes and/or the BIA and proofs of service with the court with all return receipts attached; provide copies of all documents filed with the court to County Counsel and all attorneys of record.
  11. Discuss all the pertinent information on the child’s Indian status in the court report and attach the following documents to the court report (the documents must be filed in the court prior to the hearing)
  12. Continue to provide notice of Indian child custody proceedings to possible tribes, **until**:
    - a. Court finds notice proper; or
    - b. The tribe acknowledges in writing that the child is not a member and is not eligible for membership and the court determines ICWA does not apply; or
    - c. It has been more than 60 days since the tribe received the notice and the court determines ICWA does not apply; or
    - d. The tribe intervenes; or
    - e. The tribe acknowledges in writing that the child is a member of the tribe or is eligible. When a federally-recognized tribe confirms that a child is Native American, the tribe must be noticed for all subsequent hearings regarding the Indian child.
    - f. Review each minute order and findings and orders for one or more of the following findings required for Indian cases:
      - Notice has been provided to all required parties;
      - Based on the child’s Indian status and the child’s tribal membership, either ICWA applies or ICWA does not apply;

When the Court has made the finding that ICWA does or does not apply, code the child as “eligible”, “member”, or “not eligible” on the ID page of the child’s Client Notebook on CWS/CMS;

## USEFUL LINKS

### **Administrative Office of the Courts:** [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

Click on the link (or enter it in your web browser) which will lead to the California Court homepage. On the left-hand side there is a list of options, click on Court Administration, then click on Administrative Office of the Courts. Again, on the left-hand side there is a list of options, click on Center for Families, Children & the Courts. Scroll down to ICWA Project. Click on that link and you will be taken to the homepage and on the left-hand side there are four ICWA project links:

- **ICWA Home** - identifies the ICWA project with a direct link to California Department of Social Services; provides information regarding training and contact information.
- **ICWA Project Resources** – provides highlighted links to:
  - ICWA History & Context
  - ICWA Laws, Regulations, and Rules and Forms
  - Bench Handbook: The Indian Child Welfare Act (March 2008)
  - ICWA Job Aids for State Courts and Agencies
  - California ICWA Expert Witness List
  - Services & Resources for Indian Children & Families
  - Frequently Asked Questions
- **ICWA Project Resources Directory** – search the directory using drop down boxes to identify a county and subject area (health, mental health, etc.) to find Indian service providers.

### **California Department of Social Services:** [www.childsworld.ca.gov](http://www.childsworld.ca.gov)

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

- ICWA Resources and Job Aids
- ICWA Workgroup Information
- County Letters and Notices
- Legislation and Regulations

#### Agencies and Organizations:

- State and Federal Agencies
- Training and Technical Assistance
- Tribal Advocacy, Legal Assistance and Court Information (which includes a direct link to the AOC ICWA Initiative)
- CWS Data Outcomes

### **Bureau of Indian Affairs:** [www.bia.gov](http://www.bia.gov)

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

### **Judicial Council Forms (ICWA 010, 020, 030)** [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

### **List of Non-Federally Recognized Tribes:** [www.kstrom.net/isk/maps](http://www.kstrom.net/isk/maps)

### **Native American Rights Fund:** [www.narf.org](http://www.narf.org)

Click on Publications: then click A Practical Guide to the Indian Child Welfare Act

**MOTHER'S RELATIVE IDENTIFICATION AND LOCATION FORM**

The Human Services Department is required by law to notify all known relatives within 30 days of the child's removal from the home, per AB 938.

Child's Grandmother		DOB or Age	Address or Possible Location	Phone	ADMIN USE ONLY DATE NOTIFIED
Child's Grandfather					DATE NOTIFIED
Child's Aunts/Uncles					DATE NOTIFIED
Child's Adult Siblings					DATE NOTIFIED
Other Adult Relatives (i.e. Cousins, Grt. Aunts/Uncles)					DATE NOTIFIED
Other Significant Adults known to Child					DATE NOTIFIED

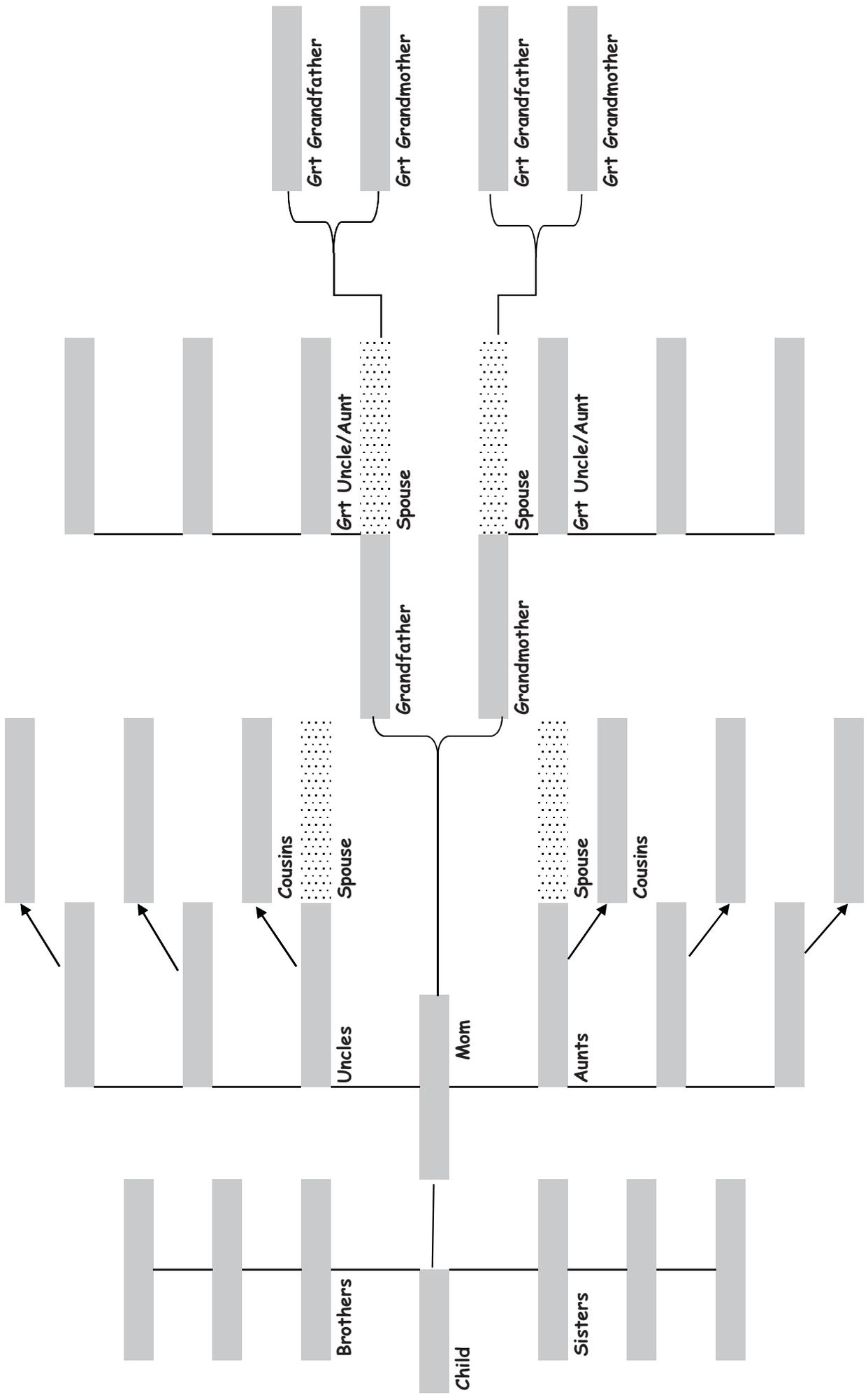
I have provided the names of all my relatives for placement consideration. I understand that names provided at a later date may or may not be considered for placement.

Parent \_\_\_\_\_ Date \_\_\_\_\_

PLEASE COMPLETE BOTH SIDES

Updated 05/2011

MOTHER'S FAMILY TREE



PLEASE COMPLETE BOTH SIDES

**FATHER'S RELATIVE IDENTIFICATION AND LOCATION FORM**

The Human Services Department is required by law to notify all known relatives within 30 days of the child's removal from the home, per AB 938.

DOB or Age		Address or Possible Location		Phone		ADMIN USE ONLY
Child's Grandmother						DATE NOTIFIED
Child's Grandfather						DATE NOTIFIED
Child's Aunts/Uncles						DATE NOTIFIED
Child's Adult Siblings						DATE NOTIFIED
Other Adult Relatives (i.e. Cousins, Grt Aunts/Uncles)						DATE NOTIFIED
Other Significant Adults known to Child						DATE NOTIFIED

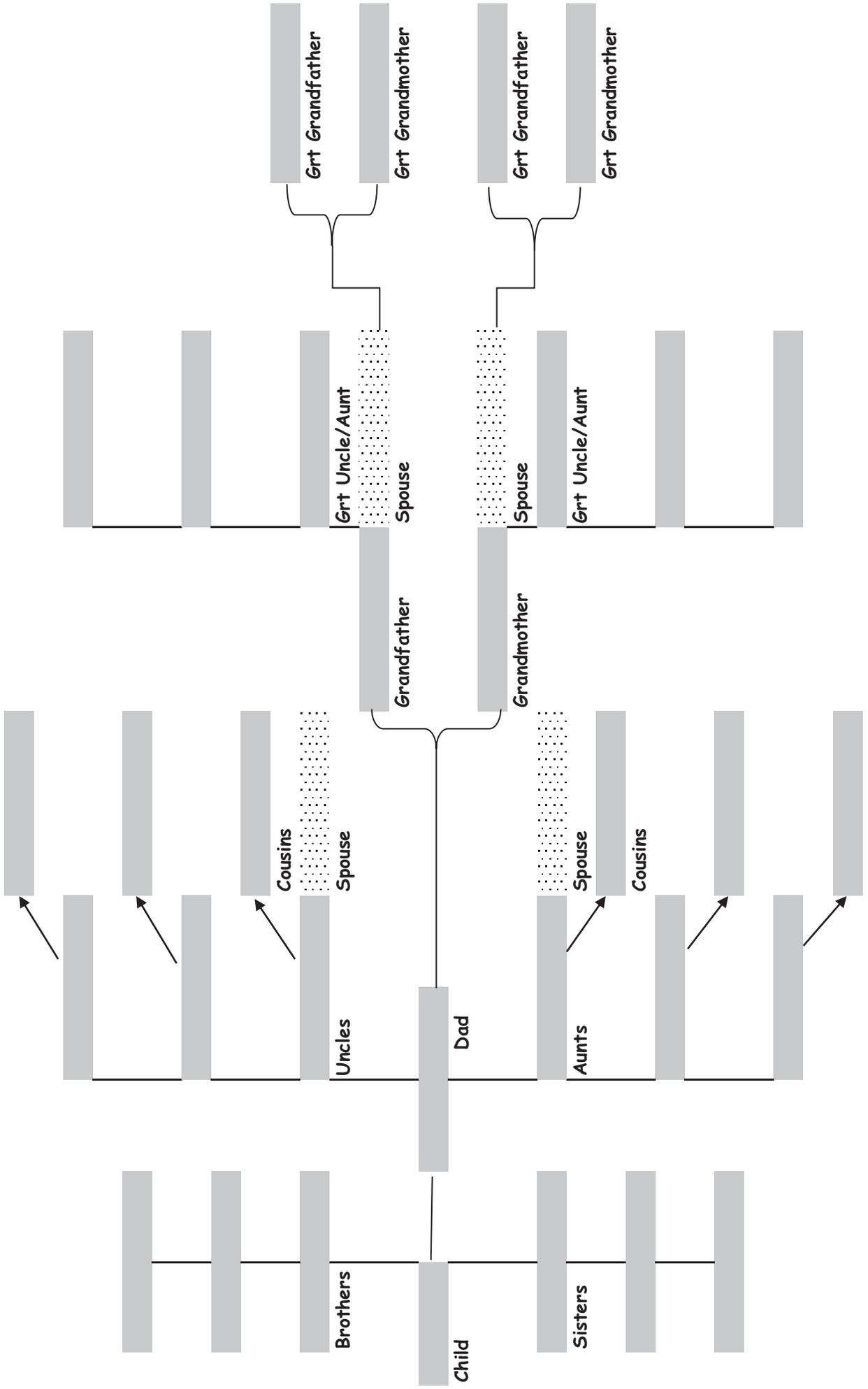
I have provided the names of all my relatives for placement consideration. I understand that names provided at a later date may or may not be considered for placement.FA

Parent \_\_\_\_\_ Date \_\_\_\_\_

PLEASE COMPLETE BOTH SIDES

Updated 05/2011

FATHER'S FAMILY TREE



PLEASE COMPLETE BOTH SIDES

ICWA-010(A)

ICWA-010(A)

CHILD'S NAME: Bart Simpson	CASE NUMBER: XXXX-DEP
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I. Name of child:

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

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

Name of tribe(s): East Fork Rancheria

Name of band (if applicable): [Tip: Look up official name in Federal Register]

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

Name of tribe(s): East Fork Rancheria

Name of band (if applicable): \_\_\_\_\_

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

d.  The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service or Tribal Temporary Assistance to Needy Families (TANF). [Tip: Check with IHS, Tribe itself, or look in the Federal Register for Tribal Status, TTANF, etc.]

e.  The child may have Indian ancestry.

f.  The child has no known Indian ancestry.

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

Person(s) questioned:

Name: Marge Simpson

Address: \_\_\_\_\_

City, state, zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date questioned: 11/01/2009

Means of communication: In person

Relationship to child: Biological Mother

Summary of information: Her grandmother may have been a member of the East Fork Rancheria.

Person(s) questioned:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, state, zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date questioned: \_\_\_\_\_

Means of communication: \_\_\_\_\_

Relationship to child: \_\_\_\_\_

Summary of information: \_\_\_\_\_

h.  Information about other persons questioned is attached.

[Tip: Good area to highlight research done. When were they questioned? Prior to detention/investigations?]

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

The child is in foster care.

It is probable the child will be entering foster care.

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

Date: November 10, 2009

Best Social Worker Ever, MSW

(TYPE OR PRINT NAME)



(SIGNATURE)

**ICWA-020**

ICWA-020

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Lucy Lucy Attorney at Law Ciummo & Associates Secondary  Santa Rosa, CA 95403 TELEPHONE NO.: (707) 555-1234      FAX NO. (Optional): (707) 555-4321 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Marge Simpson	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> Sonoma STREET ADDRESS: 600 Administration Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Rosa, CA 95403 BRANCH NAME: Sitting as the Juvenile Court	
CASE NAME: In re Bart Simpson	
CHILD'S NAME: Bart Simpson	
<b>PARENTAL NOTIFICATION OF INDIAN STATUS</b>	CASE NUMBER: XXXX-DEP

**To the parent, Indian custodian, or guardian of the above-named child: You must provide all the requested information about the child's Indian status by completing this form. If you get new information that would change your answers, you must let your attorney, all the attorneys on the case, and the social worker or probation officer, or the court investigator know immediately and an updated form must be filed with the court.**

1. Name: Marge Simpson
2. Relationship to child:  Parent     Indian custodian     Guardian     Other \_\_\_\_\_
3. a.  I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.  
 Name of tribe(s) (name each): \_\_\_\_\_  
 Name of band (if applicable): \_\_\_\_\_
- b.  I may have Indian ancestry. \_\_\_\_\_  
 Name of tribe(s): \_\_\_\_\_  
 Name of band (if applicable): \_\_\_\_\_
- c.  The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.  
 Name of tribe (name each): East Fork Tribe, Band, Reservation, Rancheria, Pueblo?  
 {CHOOSE "c." or "d."} Name of band (if applicable): [Tip: Look up official name in Federal Register]
- d.  I have no Indian ancestry as far as I know.
- e.  One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.  
 Name of tribe (name each): East Fork Tribe, Band, Reservation, Rancheria, Pueblo?  
 Name of band (if applicable): [Tip: Look up official name in Federal Register]  
 Name and relationship of ancestor(s): Paternal grandmother, "Mary" I think.
4. A previous form ICWA-020     has     has not    been filed with the court.

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

Date: November 10, 2009

Marge Simpson \_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE)

**READ STATEMENT BELOW...READ STATEMENT BELOW...READ STATEMENT BELOW...**

**Note: This form is not intended to constitute a complete inquiry into Indian heritage. Further inquiry may be required by the Indian Child Welfare Act.**

ICWA-030

CONFIDENTIAL

ICWA-030

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Steven Woodside, Sonoma County Counsel 575 Administration Dr., Rm. 105A  Santa Rosa, CA 95403 TELEPHONE NO.: (707) 565-2421 FAX NO. (Optional): (707) 565-2287 E-MAIL ADDRESS (Optional): msinglet@sonoma-county.org ATTORNEY FOR (Name): Sonoma County Human Services		FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sonoma STREET ADDRESS: 600 Administration Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Rosa, CA 95403 BRANCH NAME: Sitting as the Juvenile Court TELEPHONE NO.:			
CASE NAME: In re Bart Simpson			
NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD (check all that apply): <input checked="" type="checkbox"/> JUVENILE <input checked="" type="checkbox"/> Dependency <input type="checkbox"/> Delinquency <input type="checkbox"/> ADOPTION <input type="checkbox"/> CONSERVATORSHIP * <input type="checkbox"/> CUSTODY (Fam. Code, § 3041) <input type="checkbox"/> DECLARATION OF FREEDOM FROM CONTROL OF PARENT <input type="checkbox"/> GUARDIANSHIP <input type="checkbox"/> TERMINATION OF PARENTAL RIGHTS <input type="checkbox"/> VOLUNTARY RELINQUISHMENT OF CHILD BY PARENT		CASE NUMBER: XXXX-DEP  HEARING DATE: 12/16/2009 DEPT.: 13	

NOTICE TO (check all that apply):

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

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

Name	Date of Birth	Place of Birth
Bart Simpson	08-01-2001	NY, NY

2. HEARING INFORMATION

a. Date: 12/16/2009 Time: 2:30 p.m. <input checked="" type="checkbox"/> Dept: 13 <input type="checkbox"/> Room:
<input checked="" type="checkbox"/> Type of hearing: Jurisdiction/Disposition

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

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

East Fork Rancheria

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

CASE NAME: In re Bart Simpson	CASE NUMBER: XXXX-DEP
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4. Under the Indian Child Welfare Act (ICWA) and California law:

- a. The child's parents, Indian custodian, and the child's tribe have the right to be present at all hearings.
- b. The child's Indian custodian and the child's tribe have the right to intervene in the proceedings when ICWA applies.
- c. The child's parent, Indian custodian, or tribe may petition the court to transfer the case to the tribal court of the Indian child's tribe. The child's parent or tribe also have the right to refuse to have the case transferred to the tribal court.
- d. With the limited exceptions of the detention hearing in juvenile cases and the jurisdiction and disposition hearings in delinquency cases as identified in rule 5.482, the court will give up to 20 days from the time of the scheduled hearing if the child's parent, Indian custodian, or tribe request such time to prepare for the hearing.
- e. The proceedings could lead to the removal of the child from the custody of the parent or Indian custodian and possible adoption of the child.
- f. If the child's parents or Indian custodian have a right to be represented by a lawyer and if they cannot afford to hire one, a lawyer will be appointed for them.
- g. The information contained in this notice and all attachments is confidential. Any tribal representative or agent or any other person or entity receiving this information must maintain the confidentiality of this information and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.).
- h. An Indian custodian is any person who has legal custody of the child under tribal law or custom or state law, or to whom temporary physical custody, care, and control of the child has been transferred by a parent.

5. INFORMATION ON THE CHILD NAMED IN 1

- a. The child's birth certificate is  attached  unavailable
- b. A copy of the tribal registration card of  the child  the parent is attached.
- c. Biological relative information is listed below. (Indicate if any of the information requested below is unknown or does not apply. Do not use the abbreviation "N/A".) (Required by Fam. Code, § 180; Prob. Code, § 1460.2; and Welf. & Inst. Code, § 224.2.)

Biological Mother	Biological Father
Name (include maiden, married, and former names or aliases): Marge Simpson aka Margie Simpleton (alias) aka Marge Jones (maiden name)	Name (include former names or aliases): Homer Simpson aka Bart the Blackhearted Pirate (alias) "Homie" Simpson
Current address: Women's Recovery Services, 121 E Street, Santa Rosa, CA 95404	Current address: Sonoma County Main Adult Detention Facility, 2777 Ventura Avenue, Santa Rosa, CA 95403
Former address: Taco Bell Parking Lot, Healdsburg, CA	Former address: Taco Bell Parking Lot, Healdsburg, CA
Birth date and place: 10-08-84, NY, NY	Birth date and place: 05-08-65, East Fork, AK
Tribe or band, and location: none	Tribe or band, and location: unknown
Tribal membership or enrollment number, if known: none	Tribal membership or enrollment number, if known: unknown
If deceased, date and place of death:	If deceased, date and place of death:
Additional information: [Tip: Any other relatives you can contact?]	Additional information: [Tip: Any other relatives you can contact?]

CASE NAME: In re Bart Simpson	CASE NUMBER: XXXX-DEP
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## 5. c. INFORMATION ON THE CHILD NAMED IN 1

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Mother's Biological Mother (Child's Maternal Grandmother)	Father's Biological Mother (Child's Paternal Grandmother)
Name (include maiden, married, and former names or aliases): Jane Smith	Name (include maiden, married, and former names or aliases): Mary Simpson
Current address: unknown	Current address: unknown
Former address: NY, NY	Former address: East Fork, AK
Birth date and place: 12-12-1955, NY, NY	Birth date and place: unknown
Tribe or band, and location: none	Tribe or band, and location: East Fork Rancheria [Tip: Look up official address in Register]
Tribal membership or enrollment number, if known: none	Tribal membership or enrollment number, if known: unknown
If deceased, date and place of death: not applicable	If deceased, date and place of death: unknown

Mother's Biological Father (Child's Maternal Grandfather)	Father's Biological Father (Child's Paternal Grandfather)
Name (include former names or aliases): Papa Murphy	Name (include former names or aliases): Jack Beanstalk
Current address: unknown	Current address: Ukiah, CA
Former address: unknown	Former address: unknown
Birth date and place: unknown	Birth date and place: unknown
Tribe or band, and location: none	Tribe or band, and location: unknown
Tribal membership or enrollment number, if known: none	Tribal membership or enrollment number, if known: unknown
If deceased, date and place of death: unknown	If deceased, date and place of death: not applicable

CASE NAME: In re Bart Simpson	CASE NUMBER: XXXX-DEP
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5. d. INFORMATION ON THE CHILD NAMED IN 1

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Mother's Biological Grandmother (Child's Maternal Great-grandmother)	Mother's Biological Grandmother (Child's Maternal Great-grandmother)
Name (include maiden, married, and former names or aliases): Betsy Jones	Name (include maiden, married, and former names or aliases): Julie Brown
Current address: not applicable	Current address: unknown
Former address: NY, NY	Former address: unknown
Birth date and place: 08-03-1930 place of birth unknown	Birth date and place: unknown
Tribe or band, and location: none	Tribe or band, and location: none
Tribal membership or enrollment number, if known: none	Tribal membership or enrollment number, if known: none
If deceased, date and place of death: 06-13-2008, NY, NY	If deceased, date and place of death: not applicable

Mother's Biological Grandfather (Child's Maternal Great-grandfather)	Mother's Biological Grandfather (Child's Maternal Great-grandfather)
Name (include former names or aliases): Chuck Cheese	Name (include former names or aliases): Johnny Garlic
Current address: unknown	Current address: unknown
Former address: unknown	Former address: unknown
Birth date and place: unknown	Birth date and place: unknown
Tribe or band, and location: none	Tribe or band, and location: none
Tribal membership or enrollment number, if known: none	Tribal membership or enrollment number, if known: none
If deceased, date and place of death: not applicable	If deceased, date and place of death: not applicable

CASE NAME: In re Bart Simpson	CASE NUMBER: XXXX-DEP
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5. e. INFORMATION ON THE CHILD NAMED IN 1

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Father's Biological Grandmother (Child's Paternal Great-grandmother)	Father's Biological Grandmother (Child's Paternal Great-grandmother)
Name (include maiden, married, and former names or aliases): Josephine Simpson	Name (include maiden, married, and former names or aliases): Joan Crawford Cheese
Current address: Miami, FL	Current address: unknown
Former address: East Fork, AK	Former address: unknown
Birth date and place: unknown	Birth date and place: unknown
Tribe or band, and location: East Fork Rancheria	Tribe or band, and location: none
Tribal membership or enrollment number, if known: unknown	Tribal membership or enrollment number, if known: none
If deceased, date and place of death: not applicable	If deceased, date and place of death: not applicable

Father's Biological Grandfather (Child's Paternal Great-grandfather)	Father's Biological Grandfather (Child's Paternal Great-grandfather)
Name (include former names or aliases): Joe Simpson	Name (include former names or aliases): Chuck E. Cheese
Current address: Miami, FL	Current address: not applicable
Former address: East Fork, AK	Former address: unknown
Birth date and place: unknown	Birth date and place: unknown
Tribe or band, and location: East Fork Rancheria	Tribe or band, and location: none
Tribal membership or enrollment number, if known: unknown	Tribal membership or enrollment number, if known: none
If deceased, date and place of death: not applicable	If deceased, date and place of death: unknown

CASE NAME: In re Bart Simpson	CASE NUMBER: XXXX-DEP
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5. f. INFORMATION ON THE CHILD NAMED IN 1

(Indicate if any of the information requested below is unknown or does not apply; do not use the abbreviation "N/A".)

Indian Custodian Information	Indian Custodian Information
Name (include maiden, married, and former names or aliases):	Name (include maiden, married, and former names or aliases):
Current address:	Current former address:
Former address:	Former address:
Birth date and place:	Birth date and place:
Tribe or band, and location:	Tribe or band, and location:
Tribal membership or enrollment number, if known:	Tribal membership or enrollment number, if known:

6. ADDITIONAL INFORMATION ON CHILD NAMED IN 1

(Indicate if any of the information requested below is unknown.)

- a.  Biological birth father is named on birth certificate.  Unknown
- b.  Biological birth father has acknowledged parentage.  Unknown
- c.  There has been a judicial declaration of parentage.  Unknown
- d.  Other alleged father (name each): Mickey Mouse, Donald Duck, The Milk Man

Unknown

The following optional questions may be helpful in tracing the ancestry of the child in 1.

7. Has the child in 1 or any members of his or her family ever (if "yes," provide the information requested below):

- a. Attended an Indian school?  Yes  No  Unknown

Name/relationship to child	Type of school	Dates attended	Name and location of school

CASE NAME: In re Bart Simpson	CASE NUMBER: XXXX-DEP
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b. Received medical treatment at an Indian health clinic or U.S. Public Health Service hospital?

Yes     No     Unknown

Name/relationship to child	Type of treatment	Dates of treatment	Location where treatment given
Bart Simpson	Vaccines	unknown	Sonoma County Indian Health Project 144 Stony Point Road, Santa Rosa, CA 95401

c. Lived on federal trust land, a reservation or rancheria, or an allotment?  Yes     No     Unknown

Name/relationship to child	Name/description of property and address	Dates of residence
Mary Simpson, paternal grandmother	East Fork Rancheria, AK	unknown

d. Other relative information (e.g., aunts, uncles, siblings, first and second cousins, stepparents, etc.)

Name/relationship to child	Current and former address	Birth date and place	Tribe, band, and location
Cheyenne Blue Cloud, half-sibling	Hopland, CA	Hopland, CA	unknown

8.  Tribal affiliation and location of child in 1 (check all that apply):

a.  1906 Final Roll    Name of relative listed on roll:  
Relationship to child in 1:

b.  Roll of 1924    Name of relative listed on roll:  
Relationship to child in 1:

c.  California Judgment Roll.    Roll number, if known:

**[Tip: BIA, SCIHP, and some other Indian tribes and organizations have California Judgment Roll books]**



CASE NAME:	CASE NUMBER:
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**CERTIFICATE OF MAILING—JUVENILE COURT PROCEEDINGS**  
 (To be completed by social worker or probation officer.)

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at *(place)*:  
 on *(date)*:

Date: \_\_\_\_\_ Title: \_\_\_\_\_ Department: \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE)

**DECLARATION OF MAILING—ADOPTION, FAMILY LAW, AND PROBATE PROCEEDINGS**  
 (To be completed by the attorney for Petitioner if Petitioner is represented.)

I am an attorney at law, admitted to practice in the courts of the State of California, and attorney for Petitioner in this matter. I declare that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition identified on page 1 of this form, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at *(place)*:  
 on *(date)*:

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

Date: \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY)

**CERTIFICATE OF MAILING—PROBATE PROCEEDINGS**  
 (To be completed by the clerk of the court if Petitioner is unrepresented.)

I certify that a copy of the *Notice of Child Custody Proceeding for Indian Child*, with a copy of the petition, was mailed as follows. Each copy was enclosed in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid. The envelopes were addressed to each person, tribe, or agency as indicated below. (Except that the telephone numbers shown below were not placed on the envelopes. They are shown below because they must be disclosed in the *Notice* under Family Code section 180, Probate Code section 1460.2, and Welfare and Institutions Code section 224.2.) Each envelope was sealed and deposited with the United States Postal Service at *(place)*:  
 on *(date)*:

Date: \_\_\_\_\_ Title: \_\_\_\_\_ Department: \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE)

**This form and all return receipts must be filed with the court.**

CASE NAME: In re Bart Simpson	CASE NUMBER: XXXX-DEP
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**NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF ALL PERSONS,  
TRIBES, OR AGENCIES TO WHOM NOTICE WAS MAILED**

<p>1. <input checked="" type="checkbox"/> Parent (Name): Marge Simpson                  Street address: c/o WRS                  Mailing address: 121 E Street                  City, state and zip code: Santa Rosa, CA 95404                  Telephone number: unknown</p>	<p>2. <input checked="" type="checkbox"/> Parent (Name): Homer Simpson                  Street address: c/o MADP                  Mailing address: 2777 Ventura Avenue                  City, state and zip code: Santa Rosa, CA 95403                  Telephone number: none</p>
<p>3. <input type="checkbox"/> Guardian (Name):                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>	<p>4. <input type="checkbox"/> Guardian (Name):                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>
<p>5. <input type="checkbox"/> Indian Custodian (Name):                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>	<p>6. <input type="checkbox"/> Indian Custodian (Name):                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>
<p>7. <input type="checkbox"/> Sacramento Area Director                  Bureau of Indian Affairs                  Street address: 2800 Cottage Way                  City and zip code: Sacramento, CA 95825                  Telephone number:</p>	<p>8. <input type="checkbox"/> Secretary of the Interior                  U.S. Department of the Interior                  Street address: 1849 C Street, N.W.                  City, state and zip code: Washington D.C. 20240                  Telephone number:</p>
<p>9. <input type="checkbox"/> Tribe (Name):                  Addressee (Name):                  Title:                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>	<p>10. <input type="checkbox"/> Tribe (Name):                  Addressee (Name):                  Title:                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>
<p>11. <input type="checkbox"/> Tribe (Name):                  Addressee (Name):                  Title:                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>	<p>12. <input type="checkbox"/> Tribe (Name):                  Addressee (Name):                  Title:                  Street address:                  Mailing address:                  City, state and zip code:                  Telephone number:</p>

**Note: Notice to the tribe must be sent to the tribe chairman or designated authorized agent for service.**

Additional tribes served listed on attached form ICWA-030(A)

**[Tip: The tribe chairman/designated authorized agent for service can be found in the Federal Register.]**

**TRIBAL LIST 2010\***

<b>Tribe/Tribal Chairperson</b>	<b>ICWA Worker</b>	<b>Mailing Address</b>	<b>Telephone /Fax</b>	<b>E-mail/Website</b>
<b>LAKE COUNTY</b>				
Big Valley Rancheria Antonio Jack	Cynthia Jefferson	2726 Mission Rancheria Rd. Lakeport, CA 95453	263-3924 263-3977	<a href="mailto:cjefferson@bigvalley.net">cjefferson@bigvalley.net</a>
Elem Indian Colony	Wahlia Pearce	P.O. Box 9757 Clearlake Oaks, CA 95423	998-3003 998-3033	<a href="mailto:gerri@elemnation.org">gerri@elemnation.org</a>
Lower Lake Rancheria		P.O. Box 3162 Santa Rosa, CA 95402	575-5586	
Middletown Rancheria Jose Simon III	Ursula Simon	P.O. Box 1829 Middletown, CA 95461	987-8288 987-8205	<a href="mailto:USimon@middletownrancheria.com">USimon@middletownrancheria.com</a>
Robinson Rancheria Tracey Avila	Marsha Lee	P.O. Box 4015 Nice, CA 95464	275-9363 275-0235	<a href="mailto:mlee@robinsonrancheria.org">mlee@robinsonrancheria.org</a> <a href="http://www.robinsonrancheria.org">www.robinsonrancheria.org</a>
Scotts Valley Rancheria Donald Arnold		301 Industrial Avenue Lakeport, CA 95453	263-4220 263-4345	<a href="mailto:svpomo@svpomo.org">svpomo@svpomo.org</a>
Habematolel Pomo of Upper Lake Sherry Treppa	Angelina Arroyo	P.O. Box 516 Upper Lake, CA 95485	275-0737 275-0757	<a href="mailto:tribaladmin@upperlakepomo.com">tribaladmin@upperlakepomo.com</a>
<b>MENDOCINO COUNTY</b>				
Coyote Valley Band of Pomo Indians Brad McDonald	<b>ICFPP*</b>	P.O. Box 39 Redwood Valley, CA 95430	485-8723 485-1247	<a href="mailto:tribaladministrator@coyotevalleytribe.com">tribaladministrator@coyotevalleytribe.com</a>
Guidiville Rancheria Merlene Sanchez	Juana Brown	P.O. Box 339 Talmage, CA 95481	462-3682 462-3183	<a href="mailto:admin@guidiville.net">admin@guidiville.net</a>
Hopland Rancheria Roman Carillo	Gayle Zepeda	3000 Shanel Road Hopland, CA 95449	472-2100, ext. 1105 744-8643	<a href="mailto:gzepeda@hoplandtribe.com">gzepeda@hoplandtribe.com</a>
Laytonville Rancheria Christy Taylor		P.O. Box 1239 Laytonville, CA 95454	984-6197 984-6201	<a href="mailto:chairwoman@cahto.org">chairwoman@cahto.org</a>
Manchester-Pt. Arena Rancheria Nelson Pinola	Christine Dukatz	P.O. Box 623 Point Arena, CA 95468	882-2788 882-3417	<a href="mailto:christimarie@earthlink.net">christimarie@earthlink.net</a>
Pinoleville Pomo Nation Leona Williams	Linda Noel	500 B Pinoleville Drive Ukiah, CA 95482	463-1454 469-6601	<a href="mailto:linden@penoleville-nsn.us">linden@penoleville-nsn.us</a>
Potter Valley Rancheria Salvador Rosales		2251 S. State St Ukiah, CA 95482	462-1213 462-1240	<a href="mailto:Pottervalleytribe@pottervalleytribe.com">Pottervalleytribe@pottervalleytribe.com</a>
Redwood Valley Rancheria Elizabeth Hansen	Beverly Rodriguez	3250 Road I Redwood Valley, CA 95470	485-0361 485-5726	<a href="mailto:brodriguezicwa@gmail.com">brodriguezicwa@gmail.com</a>
Round Valley Reservation Carlino Betttega	Cynthia Card	77826 Covelo Road Covelo, CA 95428	983-8008	<a href="http://www.roundvalleyindiantribes.com">www.roundvalleyindiantribes.com</a>
<b>*Check Federal Register! This list is subject to change at any time.</b>				

Sherwood Valley Rancheria Michael Fitzgerald	Elaine Sparks	190 Sherwood Hill Dr. Willits, CA 94590	459-9690 459-6936	
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<b>SONOMA COUNTY</b>				
Cloverdale Rancheria Patricia Hermosillo	Marce Becerra	551 S. Cloverdale Blvd. Cloverdale, CA 95425	894-5775 894-5727 953-9954 (cell)	<a href="mailto:Marcebecerra@comcast.net">Marcebecerra@comcast.net</a> <a href="http://www.cloverdalerancheria.com">www.cloverdalerancheria.com</a>
Dry Creek Rancheria Harvey Hopkins	Percy Tejada	3750 Westwind Blvd, Suite 200A Santa Rosa, CA 95403	522-4248 522-4286	<a href="mailto:percyc@drycreekrancheria.com">percyc@drycreekrancheria.com</a>
Federated Indians of Graton Rancheria Greg Sarris	Michele Porter	6400 Redwood Drive, Suite 107 Rohnert Park, CA 94928	566-6100, ext. 115 206-0351	<a href="mailto:mporter@gratonrancheria.com">mporter@gratonrancheria.com</a> <a href="http://www.gratonrancheria.com">www.gratonrancheria.com</a>
Lytton Rancheria Margie Mejia	<b>ICFPP*</b>	1300 Dutton Avenue, Suite A Santa Rosa, CA 95401	575-5917 575-6974	<a href="mailto:lyttonband@aol.com">lyttonband@aol.com</a>
Stewarts Point Rancheria Ralph Sepulveda	Tara Candelaria <b>ICFPP*</b>	3535 Industrial Drive, Suite B-2 Santa Rosa, CA 95403	591-0580 591-0583	<a href="mailto:tara@stewartspointrancheria.com">tara@stewartspointrancheria.com</a>

**UNRECOGNIZED TRIBES**

Mishewal Wappo Tribe Scott Gabaldon	Scott Gabaldon	P.O. Box 5676 Santa Rosa, CA 95402	585-0502	
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**\*INDIAN CHILD & FAMILY (ICFPP) PRESERVATION PROGRAM**

Ukiah Office	Lorraine Laiwa Dolli Rose	684 S. Orchard Avenue Ukiah, CA 95482	463-2644 463-8956	<a href="mailto:lorrainel@adelphia.net">lorrainel@adelphia.net</a> <a href="mailto:karukee@yahoo.com">karukee@yahoo.com</a>
Santa Rosa Office	Liz DeRouen Laila DeRouen	2525 Cleveland Avenue Suite H Santa Rosa, CA 95403	544-8509 544-8729	<a href="mailto:lizderouen@sbcglobal.net">lizderouen@sbcglobal.net</a> <a href="mailto:lailaderouen@sbcglobal.net">lailaderouen@sbcglobal.net</a>

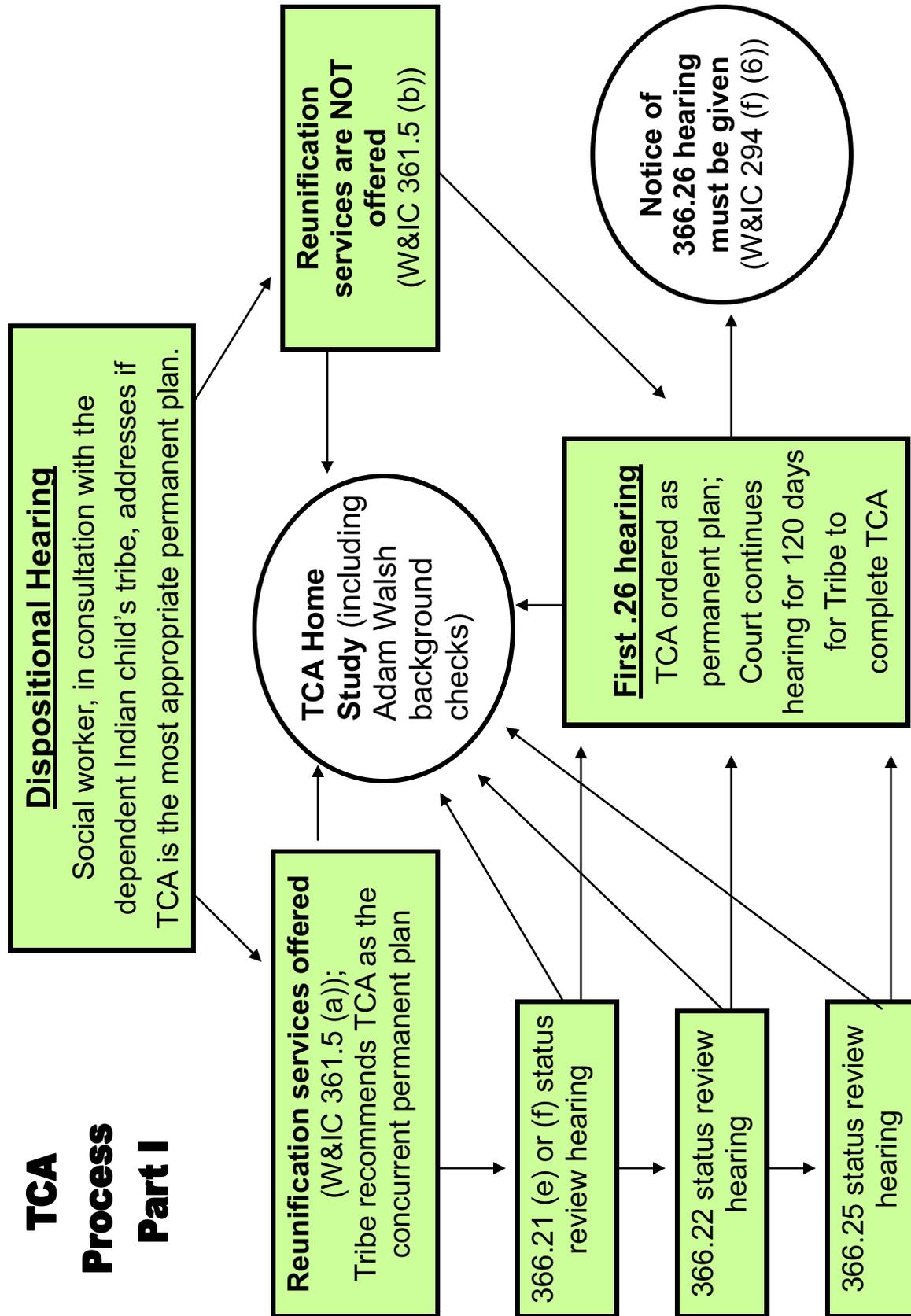
**OTHER INDIAN SERVICE PROVIDERS**

Sonoma County Indian Health Project, Inc.	Molin Malicay, <i>Ex. Director</i> Dr. Leon Wakefield, <i>Director,</i> <i>Behavioral Health</i>	144 Stony Point Road Santa Rosa, CA 95401  (Member tribes include: Cloverdale Rancheria, Dry Creek Rancheria, Federated Indians of Graton Rancheria, Lytton Rancheria, Stewarts Point Rancheria, Manchester-Point Arena Rancheria, Mishewal Wappo Tribe)	521-4645 521-4523	<a href="http://www.crihb.org/Sonoma.htm">www.crihb.org/Sonoma.htm</a>
Lake County Tribal Health Consortium	Robert Ottone, <i>Ex. Director</i> Merrill Featherstone, <i>Human Services</i>	925 Bevins Court Lakeport, CA 95453  (Member tribes include: Scotts Valley Rancheria, Middletown Rancheria, Big Valley Rancheria, Robinson Rancheria, Elem Indian Colony, Habematolel Pomo of Upper Lake)	263-8382, x 101 263-8382, 184	<a href="http://www.lcthc.com">www.lcthc.com</a>

Consolidated Tribal Health Project, Inc.	Frederick Rundlet, <i>Ex. Director</i> Alice Moore <i>Behavioral Health</i>	6991 North State Street Redwood Valley, CA 95470	485-5115 485-5115	<a href="http://www.cthp.org">www.cthp.org</a>
		(Member tribes include: Laytonville Rancheria, Coyote Valley Rancheria, Guidiville Rancheria, Hopland Rancheria, Pinoleville Pomo Nation, Potter Valley Rancheria, Redwood Valley Rancheria, Sherwood Valley Rancheria, Yokayo)		
Round Valley Indian Health Center	James Russ, <i>Ex. Director</i> Kianna Zielesch, PhD <i>Behavioral Health</i> <i>(Yuki Trails)</i>	P.O. Box 247 Covelo, CA 95428	983-6404 983-6648	<a href="http://www.rvindianhealth.com">www.rvindianhealth.com</a> (Round Valley Indian Tribes)
Graton Tribal TANF Federated Indians of Graton Rancheria	Denell Bronco, <i>Cash Assistance</i> Lara Walker <i>Y &amp; F Services</i>	6400 Redwood Dr., Suite 104 Rohnert Park, CA 94928	586-6100	<a href="http://www.gratonrancheria.com">www.gratonrancheria.com</a>
California Tribal TANF Partnership (CTTP)		2985 Lakeshore Blvd. Nice, CA 95464	262-4400	<a href="http://www.cttp.net">www.cttp.net</a> (36 member tribes, 13 county offices)
Round Valley Tribal TANF Round Valley Indian Tribes	Julie Russ <i>Director</i>	P.O. Box 448 Covelo, CA 95128	983-6126	<a href="http://www.roundvalleyindiantribes.com">www.roundvalleyindiantribes.com</a>
The Friendship House	Wayne Grigsby	56 Julian Avenue San Francisco, CA 94103	(415) 865-0964 (Admin) 431-6323(Program) 865-5428	<a href="http://www.friendshiphousesf.org">www.friendshiphousesf.org</a> Residential program for men and women
Native American Health Center - SF		160 Capp Street San Francisco, CA 94110	(415) 621-8051 621-3985	<a href="http://www.nativehealth.org">www.nativehealth.org</a>
Native American Community Education Center		P.O. Box 632 Lakeport, CA 95453	263-8424 263-0120	
Bay Area Collaboration of American Indian Resources	Mary Trimble Norris, Chairperson	BACAIR c/o AICRC 522 Grand Avenue Oakland, CA 94610	(888) 885-8286	<a href="mailto:info@bacair.org">info@bacair.org</a>
<b>FEDERAL CONTACTS</b>				
Bureau of Indian Affairs – Sacramento		Pacific Regional Office 2800 Cottage Way Sacramento, CA 95825	(916) 978-6000	

U. S. Dept. of the Interior, Indian Affairs	Larry Echo Hawk, Assistant Secretary-Indian Affairs	Indian Affairs MS-4141-MIB 1849 C Street, N.W. Washington, D.C. 20240	(202) 208-7163 (202) 208-5320	<a href="http://www.bia.gov">www.bia.gov</a>
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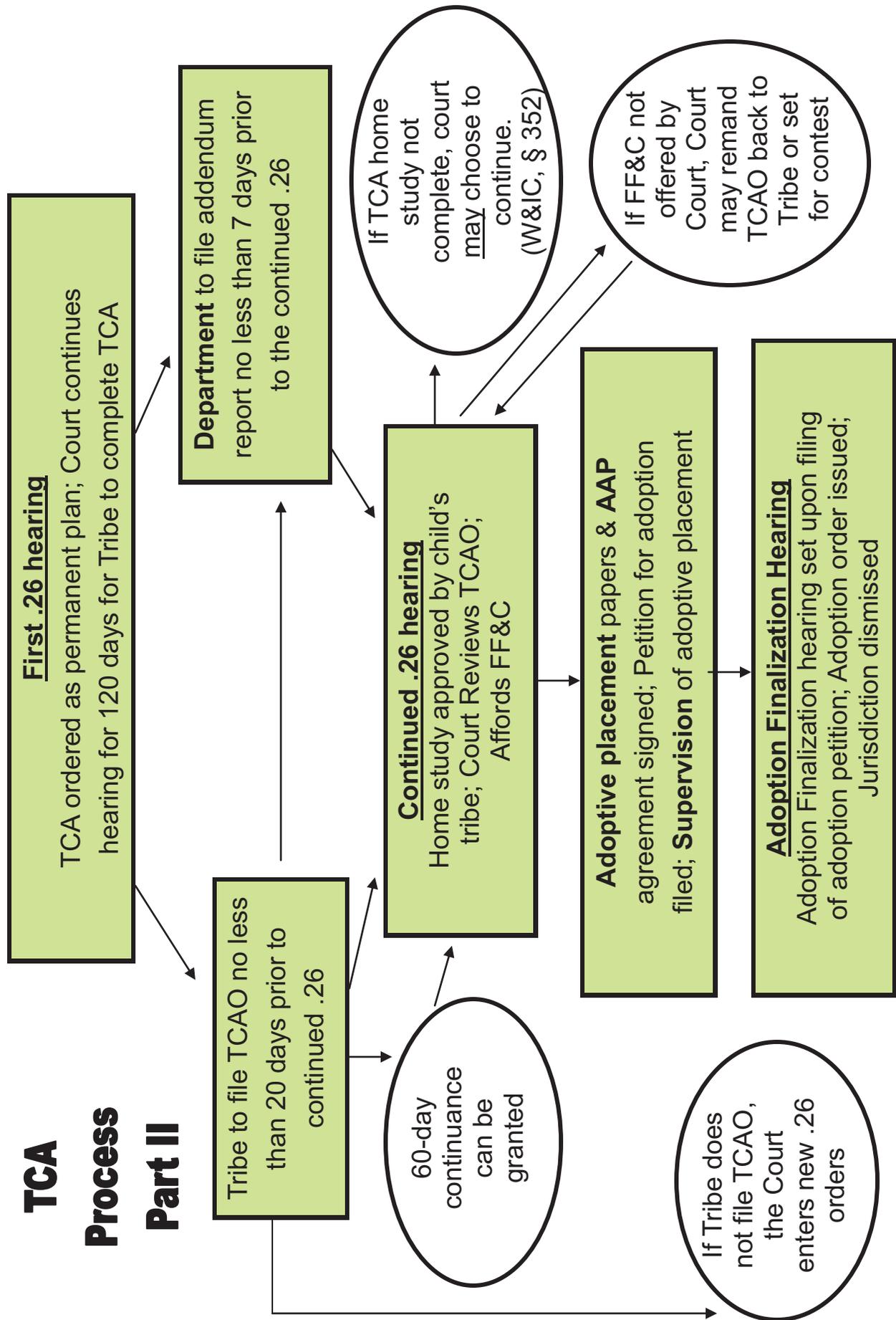
# TCA Process Part I



# TCA

## Process

### Part II





<p><b>Applicability</b> (25 U.S.C. §§ 1901-1923, 1903(f); Prob. Code, §§ 1459.5(a), 1516.5(d); Cal. Rules of Court, rule 5.480) ICWA applies to any state court proceeding involving an Indian child that may result in a voluntary or involuntary foster care placement; guardianship placement; custody placement under Family Code section 3041; declaration freeing a child from the custody and control of one or both parents; termination of parental rights; or voluntary or involuntary adoptive placement including all proceedings under WIC sections 300 et seq. and 601 and 602 et seq. when the child is in foster care or at risk of entering foster care.</p>
<p><b>Indian Child</b> (25 U.S.C. § 1903(4); Fam. Code, § 170(a); Prob. Code, § 1449(a); WIC, § 224.1(a)) Is an unmarried person under the age of 18 who is (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe. A determination by a tribe or the Bureau of Indian Affairs (BIA), absent a determination by the tribe to the contrary, that a child is or is not a member or eligible for membership is conclusive.</p>
<p><b>Indian Custodian</b> (25 U.S.C. § 1903(6); Fam. Code, § 170(a); Prob. Code, § 1449(a); WIC, § 224.1(a)) Is any person who has legal custody of an Indian child under tribal law or custom or state law or to whom temporary physical care, custody, and control has been transferred by the parent.</p>
<p><b>Intervention / Invalidation</b> (25 U.S.C. §§ 1911(c), 1914; Fam. Code, §§ 175(c), 177(a); Prob. Code, §§ 1459(c), 1459.5(b); WIC, §§ 224(e), 224.4; Cal. Rules of Court, rule 5.482(e)) An Indian child, Indian custodian, and Indian child's tribe have the right to intervene at any point in the proceeding. If ICWA applies, the Indian child, parent, Indian custodian, or the child's tribe may petition any court of competent jurisdiction to invalidate the proceedings for not complying with ICWA.</p>
<p><b>Inquiry</b> (Fam. Code, § 177(a); Prob. Code, §§ 1459.5(b), 1513(b); WIC, § 224.3; Cal. Rules of Court, rule 5.481) In all child custody proceedings, the court and the petitioner, including a social worker, a probation officer, a licensed adoption agency or adoption service provider, or an investigator must ask the child, the parents or legal guardians, and the Indian custodian as soon as possible whether the child may be an Indian child and must record the information, if applicable, on the petition. In all juvenile cases, at their first court appearance, the parent or guardian must be ordered to complete <i>Parental Notification of Indian Status</i> (form ICWA-020).</p>
<p><b>Circumstances That May Provide Reason to Know the Child Is an Indian Child</b> (Fam. Code, § 177(a); Prob. Code, § 1459.5(b); WIC, § 224.3(b); Cal. Rules of Court, rule 5.481(a)(5)) 1. A person having an interest in the child provides information suggesting that the child is an Indian child; 2. The residence or domicile of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or 3. The child or family has received services or benefits that are available to Indians, from a tribe or a federal agency, such as the Indian Health Service.</p>
<p><b>Notice</b> (25 U.S.C. § 1912(a); Fam. Code, § 180; Prob. Code, § 1460.2; WIC, §§ 224.2, 727.4(a)(2); Cal. Rules of Court, rule 5.481(b)) <b>When:</b> It is known or there is reason to know that an Indian child is involved unless it is determined that ICWA does not apply in accordance with WIC, § 224.3. <b>How:</b> Party seeking foster care placement, guardianship, or termination of parental rights must notify the parent and Indian custodian, and the Indian child's tribe, of the pending proceedings in the manner specified in Fam. Code, § 180, Prob. Code, § 1460.2, or WIC, § 224.2. <i>Notice of Involuntary Child Custody Proceedings for an Indian Child (Juvenile Court)</i> (form ICWA-030) is required to be completed and sent for all juvenile proceedings and recommended for all other applicable proceedings. In addition to the information included on form ICWA-030, the party must also include: 1. Information regarding the Indian child's Indian custodian including: all known names, including maiden, married, former, and aliases; current and former addresses; birthdates; places of birth and death; tribal enrollment numbers; and any other identifying information, if known. 2. A copy of the child's birth certificate if available. 3. A copy of the petition by which the proceeding was initiated. 4. The location, mailing address, and telephone number of the court and all parties notified.</p>
<p><b>Active Efforts</b> (25 U.S.C. § 1912(d); Fam. Code, §§ 177(a), 3041(e); Prob. Code, § 1459.5(b); WIC, § 361.7; Cal. Rules of Court, rule 5.484(c)) The party seeking an involuntary foster care placement, guardianship, or termination of parental rights must provide evidence to the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts were unsuccessful. What constitutes active efforts is assessed on a case-by-case basis. Active efforts must consider the prevailing social and cultural values and way of life of the Indian child's tribe. Active efforts to provide services must include pursuit of any steps necessary to secure tribal membership for a child if the child is eligible for membership in a given tribe, as well as attempts to use the available resources of extended family members, the tribe, Indian social service agencies, and individual Indian caregivers.</p>
<p><b>Qualified Expert Witness Testimony</b> (25 U.S.C. § 1912(e); Fam. Code, §§ 177(a), 3041(e); Prob. Code, §§ 1459.5(b); WIC, §§ 224.6, 361.7(c); Cal. Rules of Court, rule 5.484(a)) Before the court orders foster care or adoptive placement, establishes a guardianship or terminates parental rights, the court must require testimony of a qualified expert witness regarding whether continued custody of the child by the parent or Indian custodian is likely to cause the child serious emotional or physical damage. This person cannot be an employee of the person or agency seeking the foster care placement or termination of parental rights. Persons most likely to meet the requirements for a qualified expert witness are: 1. a member of the child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices; 2. any expert witness with substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the child's tribe; and 3. a professional person having substantial education and experience in the area of his or her specialty.</p>

<p><b>Placement Preferences</b> (25 U.S.C. § 1915; Fam. Code, § 177(a); Prob. Code, § 1459.5(b); WIC, § 361.31; Cal. Rules of Court, rule 5.484(b))</p> <p>The following placement preferences and standards must be followed in any case in which an Indian child is removed from the physical custody of his or her parents or Indian custodian. <b>Foster Care, Guardianships, and Custody to Non-parent:</b> If reason to know the child is an Indian child, the court must order the least restrictive setting that most approximates a family situation within reasonable proximity to the Indian child's home and meets the child's special needs, if any. Preference must be given in the following order:</p> <ol style="list-style-type: none"> <li>1. a member of the Indian child's extended family;</li> <li>2. a foster home licensed, approved, or specified by the Indian child's tribe;</li> <li>3. an Indian foster home licensed or approved by an authorized non-Indian licensing authority;</li> <li>4. an institution approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.</li> </ol> <p><b>Adoptive Placements:</b> Preference must be given in the following order: 1. a member of the Indian child's extended family; 2. other members of the Indian child's tribe; 3. another Indian family. The tribe, by resolution, may establish a different preference order, which must be followed if it provides for the least restrictive setting.</p> <p><b>Placement Standards and Records</b> (25 U.S.C. § 1915; Fam. Code, §§ 177(a), 3041(e), 7892.5; Prob. Code, § 1459.5(b); WIC, §§ 361(c)(6), 361.31, 361.7(c), 366.26(c)(2)(B); Cal. Rules of Court, rule 5.484(b)(1))</p> <p>The preferences of the Indian child and the parent must be considered. Placement standards must be the prevailing social and cultural standards of the child's tribe or the Indian community in which the parent or extended family member resides or extended family member maintains social and cultural ties. A determination of the applicable prevailing social and cultural standards may be confirmed by the Indian child's tribe or qualified expert witness testimony. The California Department of Social Services must maintain a record of each placement of an Indian child and active efforts to comply with the placement preferences.</p> <p><b>Burden of Proof and Qualified Expert Witness</b> (25 U.S.C. § 1912(e), (f); Fam. Code, §§ 3041(e), 7892.5; Prob. Code, § 1459.5(b); WIC, §§ 361.7(c), 366.26(c)(2)(B); Cal. Rules of Court, rule 5.484(a))</p> <p>The burden of proof to place a child in foster care, appoint a guardian, and award custody to a non-parent is <i>clear and convincing evidence</i>, including testimony of a qualified expert witness. The burden of proof to terminate parental rights is <i>beyond a reasonable doubt</i>, including testimony of a qualified expert witness.</p> <p><b>Good Cause to Deviate From the Placement Preferences</b> (25 U.S.C. § 1915; WIC, § 361.31(h); Cal. Rules of Court, rule 5.484(b)(2) and (3))</p> <p>The court may determine that good cause exists not to follow the placement preferences, which may include the following considerations:</p> <ol style="list-style-type: none"> <li>1. Requests of the parent or Indian custodian or Indian guardian;</li> <li>2. Requests of the Indian child;</li> <li>3. Extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; and</li> <li>4. Unavailability of suitable families based on a diligent effort to identify families meeting the preference criteria.</li> </ol> <p>The party requesting a different order has the burden of establishing good cause.</p> <p><b>Adoption</b> (25 U.S.C. §§ 1917, 1951; Fam. Code, § 9208; Cal. Rules of Court, rule 5.487)</p> <p>The court must provide the Secretary of the Interior a copy of the adoption order and other information needed to show: 1. the name and tribal affiliation of the Indian child; 2. the names and addresses of the biological parents; 3. the names and addresses of the adoptive parents; 4. the identity of any agency having files or information relating to such adoptive placement; and 5. any confidential parent affidavits. At the request of an adopted Indian child over age 18, the adoptive or foster parents, or the tribe, the Secretary must disclose information about enrollment or any rights or benefits associated with membership in the tribe. If the documents contain a confidential parent affidavit, the Secretary must certify to the tribe the information necessary for enrollment. At the request of an adopted Indian child over the age of 18, the court must provide information about the individual's tribal affiliation, biological parents, and other information as may be necessary to protect any rights flowing from the individual's relationship to the tribe.</p> <p><b>Jurisdiction and Transfer</b> (25 U.S.C. § 1911(a), (b); Fam. Code, § 177(a); Prob. Code, § 1459.5(b); WIC, § 305.5 Cal. Rules of Court, rule 5.483)</p> <p><b>Exclusive Jurisdiction:</b> If an Indian child is a ward of the tribal court or resides or is domiciled on a reservation that exercises exclusive jurisdiction, notice must be sent to the tribe by the next working day following removal. If the tribe determines that the child is an Indian child, the child-custody proceeding must be transferred to the tribe within 24 hours after receiving the written determination from the tribe.</p> <p><b>Transfer to Tribal Jurisdiction:</b> If the above exclusive jurisdiction does not apply, the tribe, parent, or Indian custodian may petition the court to transfer the proceedings to the tribal jurisdiction. The court must transfer the proceedings unless there is good cause not to do so. Either parent may object to the transfer, or the tribe may decline the transfer of the proceedings.</p> <p><b>Right to Counsel</b> (25 U.S.C. § 1912(b); Fam. Code, § 180(b)(5)(G)(v); Prob. Code, § 1474; WIC, § 317(a)(2))</p> <p>The parent, Indian custodian, or Indian guardian, if indigent, has the right to court-appointed counsel.</p> <p><b>Examination of Reports and Documents</b> (25 U.S.C. § 1912(c); Fam. Code, § 177(a); Prob. Code, § 1459.5(b))</p> <p>The parent, Indian child, Indian custodian, tribe, and their attorneys have the right to examine all court documents related to the dependency case.</p> <p><b>Full Faith and Credit</b> (25 U.S.C. § 1911(d); Fam. Code, § 177(a); Prob. Code, § 1459.5(b); WIC, § 224.5)</p> <p>Full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe is required.</p> <p><b>Right to Additional Time</b> (25 U.S.C. § 1912 (a); Fam. Code § 180(e); Prob. Code § 1460.2(e); WIC §224.2(d); Cal. Rules of Court, rule 5.482(a))</p> <p>With the exception of the detention hearing, and jurisdiction hearing in a delinquency case, and certain disposition hearings in a delinquency case, the court cannot proceed until 10 days after receipt of notice by tribe(s) and BIA and must grant 20 extra days for preparation if requested.</p>
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