

Indian Child Welfare Act (ICWA)

322.1 INITIAL INQUIRY

The department will inquire about each youth's Indian status, thereby attempting to determine if a youth is a member or eligible for membership of an Indian tribe (WIC 224.2(a)). Identifying the youth's Indian status is a collaborative process. Agencies such as the Health and Human Services Agency and the Superior Court of California - County of San Diego will make inquiries in accordance with their policies and the law. If the youth's Indian status has already been identified, and the required documentation has been completed by another agency and submitted to the court, these procedures can be modified as needed. For youth whose Indian status has not been identified, inquiry will occur in the following manner.

322.1.1 CASE FILES

When receiving a case file, Probation Officers (PO's) will verify that an Indian status inquiry previously occurred with conclusive results. If there is no evidence that an inquiry occurred, or if the inquiry resulted in an ambiguous result, the PO will verify the youth's Indian status by following the below procedures.

322.1.2 YOUTH ENTERING CUSTODY

When entering a juvenile detention facility, the Detention Control Officer will ask each youth if they or their parent or guardian are a member of an Indian tribe or eligible for membership; and if so, which tribe. The youth's response will be recorded in PCMS. If the youth respond they are a member, or may be a member of an Indian tribe, that information will be entered into PCMS and accessible to the PO of record. In all cases, and regardless of the youth's response during facility reception, the PO of record will inquire as to if the youth is an Indian child. Inquiry includes, but is not limited to asking the youth, parents, legal guardian, Indian custodian, extended family members, and others who have interest in the youth, including the tribe (WIC § 224.2(b)). Contact with the tribe shall include sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the status of the youth and the case (WIC § 224.2(e)(2)(C)). The inquiry results will be documented in PCMS.

322.1.3 OUT OF CUSTODY YOUTH

The PO of record will make inquiries on all the youth on their caseloads as to if the youth is an Indian child, unless a previous inquiry was accomplished, and the results were unambiguous.

Inquiry includes, but is not limited to, asking the youth, parents, legal guardian, Indian custodian, extended family members, and others who have interest in the youth, including the tribe (WIC § 224.2(b)). Contact with the tribe shall include sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the status of the youth and the case (WIC § 224.2(e)(2)(C)). The inquiry results will be documented in PCMS.

San Diego County Probation Department

Administrative Services Procedure Manual

Indian Child Welfare Act (ICWA)

322.1.4 DOCUMENT INQUIRY ON ICWA-010(A) AND ICWA-020

Regardless of custody status, if the PO believes the youth may be part of an Indian tribe or may be eligible to be part of an Indian tribe, the PO will consult the attached Indian tribe roster and telephonically consult with the tribe to determine the youth's tribal status. The PO will complete the ICWA-010(A) form, and direct the parent(s), Indian custodian custodian(s), or guardian(s) to complete the ICWA-020 form. The completed documents will be attached to the officer's court reports.

322.1.5 INITIAL INQUIRY RESULTS

If the initial inquiry definitively rules out Indian tribe membership or eligibility for Indian tribe membership for the youth, no further actions are required under this policy or procedure, other than clearly documenting inquiry efforts, noting the youth's' eligibility status in PCMS, and filing the ICWA-010(A) and ICWA-020.

If the PO has "reason to know" that the youth is an Indian child or eligible for tribal membership, PO will follow the standards in sections 322.3 and 322.4. "Reason to know" means the PO is confident the youth is member of an Indian tribe.

If the PO has reason to believe but is not confident the youth is a member of an Indian tribe, then further inquiry, as outlined in section 322.2 below, is required.

322.2 REASON TO BELIEVE AND FURTHER INQUIRY

Should the Court or other entity have information suggesting the youth or parent(s) are members of a tribe, or eligible for tribal membership, the PO will conduct additional inquiry to clarify the youth's status. The PO will interview extended family members, contact the Bureau of Indian Affairs at (916) 978-6000, the California Department of Social Services at (916) 651-6160, ICWA@DSS.ca.gov and the youth's tribe to determine the youth's status (WIC § 224.2(e)). The PO will consult the attached Indian tribe roster and contact the tribe the youth is potentially affiliated with by telephone to confirm the youth's status.

322.3 REASON TO KNOW

The reason to know exists when any party or person having an interest in the youth, including the parents, state the youth is an Indian child. It can also occur when the youth states they are a member of an Indian tribe, or when the confirmed address of the youth is on a reservation or in an Alaskan Native Village, or the youth has been a ward of the tribal court, or a member of an Indian tribe states the youth is a member, or if the youth or either parent has a tribal membership/ citizen card (WIC § 224.2(d)).

322.4 ICWA NOTICE REQUIREMENTS

Once the PO has established a reason to know the youth is a member of an Indian tribe, and once the tribe is known, the youth's Indian tribe is entitled to the same notices as other parties. If the youth is a member of more than one tribe, notice must be sent to each tribe.

San Diego County Probation Department

Administrative Services Procedure Manual

Indian Child Welfare Act (ICWA)

When tribal membership is known, and the youth is in foster care, or at risk of entering foster care, or the Court is setting a hearing to terminate parental rights, or for any hearing that could result in a foster-care placement, termination of parental rights, pre-adoptive placement, or adoptive placement, the PO must send mandatory form ICWA-030 (a copy of the petition, and the redacted court report (all personal information for other parties beside the Indian child must be redacted) prepared for the hearing, to the youth's parents or guardians, the Indian custodian (if any), and the tribe(s) that the child youth may be a member or eligible for membership in (WIC § 224.3(a)). The notice shall be sent by registered or certified mail with return receipt requested (WIC § 224.3(a)(1)). Notice to the tribe shall be to the tribal chairperson unless the tribe has designated another agent for service (WIC § 224.3(a)(2)).

If the parents, Indian custodian, or tribe cannot be determined or located, notice must be sent via mail to the appropriate Bureau of Indian Affairs (BIA) office. Upon receiving the notice, the BIA must make efforts to locate and notify the parents, tribe, or Indian custodian of child custody proceedings. The BIA has 15 calendar days to provide notice to the parents or Indian custodian and tribe or to notify the court it needs additional time. (25 C.F.R. Part 23.11(c))

322.5 DISPOSITION REPORT REQUIREMENTS IF AN INDIAN YOUTH IS INVOLVED AND IT IS PROBABLE THE YOUTH WILL BE ENTERING FOSTER CARE OR IS ALREADY IN FOSTER CARE

The PO will document in PCMS and in the JVSS efforts made to determine if an Indian child is involved by completing the Indian Child Inquiry Attachment (ICWA-010(A)) and attaching the completed form to the JVSS. The PO will prepare the case plan in collaboration with the Child and Family Team Meeting (CFT) within 30 days of removal or by the date of the disposition hearing, whichever occurs first, that includes active efforts to provide resources and services that are remedial, rehabilitative, and culturally specific to the Indian child's family and designated to prevent the breakup of the Indian Family (25 USC § 1912(d); WIC § 361.7; CRC 5.485(c)). In preparing the case plan, the PO must solicit and integrate input of the youth's Indian tribe (CRC 5.785(c)(2)).

The foster care placement of an Indian child requires placement in accordance with the ICWA preferences. The placement should be the least restrictive setting that best approximates a family and where the youth's special needs, if any, may be met. Unless the youth's tribe has by resolution specified a different preference, preference must be given in order of priority to placement with (1) a member of the Indian child's extended family; (2) a foster home licensed, approved, or specified by the Indian child's tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (4) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs. If no placement is available that meets these preferences, efforts must be made to place the youth with a family committed to preserving the youth's family ties and tribal relations (25 USC § 1915(b); WIC, § 361.31).

Because the court must make a finding that the placement accords with ICWA, the PO must document in the JVSS efforts made to find a placement that meets the preferences of ICWA and

San Diego County Probation Department

Administrative Services Procedure Manual

Indian Child Welfare Act (ICWA)

the good cause, if applicable, for deviating from priority placements (WIC § 361.31(h)). These efforts would include contacts with members of the youth's extended family, contacts with the child's tribe(s) seeking input and resources for placement, and contacts with relevant Indian organizations. These efforts should be made and documented each time there is a change in the Indian child's placement.

322.6 MEMBERSHIP IN MORE THAN ONE TRIBE

If an Indian child is a member or eligible for membership in more than one tribe, the Indian tribe with which the youth has the more significant contacts will be deemed the "Indian Child Tribe." Deference should be given to the tribe for which the Indian child is already a member or citizen, unless otherwise agreed to by the tribes. In these instances, the Probation Officer will inform the court of the youth's membership or eligibility for membership in more than one tribe via the Court report in order for the Court to make a determination related to the Indian Child Tribe.

322.7 MEMBERSHIP IN NON-FEDERALLY RECOGNIZED TRIBES

It is not uncommon for a family or child to have a significant connection to one or more Indian tribes and not meet the definition of an "Indian child" under ICWA. When the PO has reason to believe a child or family has a connection to a non-federally recognized tribe or has a connection to a federally recognized tribe but is not eligible for membership, then the "Spirit of ICWA" applies. The Spirit of ICWA means the probation department will apply the best practices reflected in ICWA to all Native American families and children even when ICWA does not technically apply. These services may include but are not limited to:

- (a) The PO working with the tribe and other tribal agencies to provide culturally responsive services;
- (b) Making active efforts to engage families affected by trauma in reunification efforts with representatives of local and state governments (i.e., county child welfare agencies and state courts); and
- (c) Placing youth in homes with extended family members or other Indian or tribal families. If there are none available, ensuring the youth is placed in a setting dedicated to promoting the youth's connections to his or her extended family, tribal culture and tribal community.

322.7.1 COURT DETERMINATION

Pursuant to WIC Section 306.6, in cases where ICWA will not apply to court proceedings when a youth is a member of or eligible for membership in a non-federally recognized tribe, the court may allow the youth's non-federally recognized tribe to participate, be present at the hearing, address the court, request and receive notice of the hearings, request to examine court documents relating to the proceeding, present information to the court that is relevant to the proceedings, submit written reports and recommendations to the court, and perform other duties and responsibilities as requested or approved by the court. Active efforts, and placement preference, are not required for these cases.