

DSS Policy and Procedure Guide

Division 03: Child Welfare

Chapter 06: Court

Item 009: Notice Requirements for a Child Under the Indian Child Welfare Act (ICWA)

Suggested changes send to: [DSS PSOA Mailbox](#)

Issued: **June 9, 2017**

References: Welfare and Institution Code (WIC) [224.2](#); WIC [290.1](#); WIC [290.2](#), WIC [291](#); WIC [292](#); WIC [293](#); WIC [306.6](#); [All County Letter 08-02](#); [Indian Child Welfare Act](#) (25 U.S.C. § 1901 et seq.); [Senate Bill 678](#); [PPG 03-03-039](#); [PPG 03-04-021](#); [PPG 03-08-010](#); [DSS ICWA Folder](#); Bureau of Indian Affairs 1979 [Guidelines](#); Federal Register [2016](#)

Revisions in Red

Replaces Issue: **October 5, 2012**

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Preamble

Child Welfare Policy and Procedure Guides (PPG) are meant to be used as tools to relay best practice and staff expectations. It is understood that specific case scenarios may not always align themselves with the stated practices and that at all times what is of paramount importance is the Safety and Well-being of the children we are charged to protect.

Policy

The Indian Child Welfare Act (ICWA) includes mandates that notice of juvenile dependency hearings be sent to parents, tribes, and Indian custodians (when applicable) where the Department of Social Services (DSS) “knows or has reason to know” that a child may have Native American heritage. This is in addition to the regular notice sent to parties involved in a juvenile dependency court proceeding. While it is best practice to involve a tribe as soon as DSS becomes aware of a family’s Native American status (see [ER](#), [FR](#), [Adoption](#) PPGs), formal written notice is required by law. Lack of appropriate ICWA notice is the most common reason that dependency cases are overturned or remanded on appeal.

NOTE: Notice is needed for each child that may have Native American heritage. Therefore, even if a sibling is born to parents and later removed whose other children were found to be/not be ICWA eligible, a new notice must be sent to the tribe(s) for the sibling.

Purpose

Notice to parents, tribes, and Indian custodians are necessary to ensure that they have the opportunity to participate in the proceedings and possibly intervene. This PPG will provide staff with the requirements for appropriate notice.

Procedure

In order to know if notice is needed to any tribes and/or Indian custodians, families must be asked if they have any Native American heritage. Inquiry of Native American Heritage should be made for every family served by child welfare during initial contact with the family. Inquiry must be made when a child is removed from their home. Inquiry must not be made later than the time of the detention hearing, provided the parents' whereabouts is known or there are no other family members to ask.

Inquires should be made each time a parent or new family member becomes known to the DSS, no matter where the case is in the court process. In addition, upon the case being transferred to the Assessment/Adoption area, the assigned Social Worker (SW) must verify the previous inquiries with the parents and document this in CWS/CMS. Any new information indicating Native American heritage requires a new [ICWA- 030](#), *Notice of Child Custody Proceeding for Indian Child* form.

When a Hold is Placed/Detention Hearing

The assigned SW shall provide the parent or guardian with a Child Packet for each child at the time of removal. The Child Packet shall include forms [ICWA-020](#), *Parental Notification of Indian Status* and [ICWA- 030](#), *Notice of Child Custody Proceeding for Indian Child*.

The assigned SW shall request the parent or guardian to complete the full [ICWA- 020](#) and the family history part of the [ICWA-030](#) for each child and take it to the Team Decision Meeting (TDM) regarding the child(ren).

If the parent/guardian does not submit a completed [ICWA-020](#) and/or [ICWA- 030](#), the designated ICWA support staff or the assigned SW shall interview the parent or guardian and obtain the required information. The results of the inquiry shall be documented on the [ICWA-010\(A\)](#).

If the parent/guardian states that the child's birth parents do not have Native American heritage or that the child's grandparents, great-grandparents or other lineal ancestors are not members of an Indian tribe, notice to any tribe is not needed at that time but may in the future (see Post Detention Hearings section).

If the parent/guardian states that the child is a member of or may be eligible for membership in an Indian tribe, or the child's birth parents do have Native American heritage, or that the child's grandparents, great-grandparents or other lineal ancestors are/were members of an Indian tribe, the [ICWA-030](#) must be completed. In addition, the assigned SW will attempt to advise the tribe of the detention hearing via person, telephone, and/or email.

The [ICWA-010\(A\)](#) and [ICWA-020](#) shall accompany the petition and detention report when the documents are provided to the court.

At their first court appearance, the court shall order the parents to complete the [ICWA-020](#). If the parents are not present at the first court hearing, the court shall order DSS to use due diligence to locate the parents and inform them that the court has ordered the parents to complete the [ICWA-020](#).

Once the parent(s) is located, the **assigned** SW or designated ICWA **support staff** shall have the parents complete the [ICWA-020](#) and submit it as an attachment with the court report for the next court hearing.

The **assigned** SW shall document the information obtained in the inquiry in the child's Client Notebook **and narrate the conversation** in CWS/CMS.

If the **child is detained in court**, the designated ICWA **support staff** must notify the tribe by written notice, using the [ICWA-030](#). **This applies to Federally Recognized Tribes and Non-Federally Recognized Tribes** as California law recognizes the right of a Non-federally Recognized Tribe to intervene.

Post Detention Hearings

SWs have an affirmative and **ongoing** duty to inquire if a child is an Indian child. If new information is obtained regarding the child's Indian Heritage, the tribe, **and** BIA must be re-noticed with the new information. This must be done even if the court already found that ICWA does not apply.

Notice under ICWA (and statutory notice) must be sent if the SW knows or has reason to know that a child may be an Indian child. The SW should know or have reason to know that the child **may** be an Indian child if:

- A person having an interest in the child gives information suggesting that the child has Indian heritage. A person of interest could be a parent, guardian, Indian custodian, tribe, public or private agency, a member of the child's extended family, or someone close to the family; or
- The parent, child, or Indian custodian live in an Indian community; or
- Someone from the child's family received or is receiving services or benefits from a tribe or federal Indian agency.

If the court determines that the ICWA is applicable **and the Tribe intervenes**, the **assigned** SW is **responsible for ensuring that the Tribe is sent (either by completing themselves and/or asking the ICWA support staff) full discovery, court reports and the Findings and Orders indicating ICWA is applicable** along with the required notice to be received by the Tribe at least 10 days prior to the hearing. **If ICWA is found to be applicable but the Tribe does not intervene, the Tribe is still required to have notice sent to them, and can receive court documents upon request.**

Non-Federally Recognized Tribes

ICWA does not apply to non-federally recognized tribes. However, the court **may** permit upon request **from the tribe or DSS**, a Non-Federally Recognized tribe to participate in the court proceedings, **including**:

- be present;
- address the court;
- *request and receive notices of hearing*;
- request to examine related court documents;
- present relevant information to the court;
- submit written reports;
- perform other duties and responsibilities as requested or approved by the court.

(Welfare and Institutions Code § [224.2\(a\)\(5\)\(G\)\(i\)](#); § [306.6\(b\)\(3\)](#).) **In this situation**, Non-Federally Recognized Tribes are entitled to the same notices of hearing as Federally Recognized Tribes. **Providing notice to non-federally recognized tribes is also in line with the Spirit of ICWA.**

Parties to be Noticed

Parties to be noticed under ICWA are:

- Parent and/or Legal Guardian
- Bureau of Indian Affairs (BIA)
Sacramento **Regional** Director
Federal Office Building
2800 Cottage Way
Sacramento, California 95825
- Indian Custodian
- All tribes in which the child may claim or may be eligible for membership by tribal affiliation (Tribe/Band/Rancheria), if known.

Notice to the tribe shall be sent to the tribal Chairperson **and any** designated agent for service. **Courtesy notices can be made upon request of the tribe.**

If the tribe has not designated another agency for service in the Federal Register, and the name of the tribal Chairperson is unknown, the notice to the tribe shall be addressed as follows: “Tribal Chair Person, (Name of Tribe).”

Required Forms

As of January 1, 2008 the [ICWA-030](#), *Notice of Child Custody Proceeding for Indian Child* replaced the JV-135, *Notice of Involuntary Child Custody Proceedings for an Indian Child*. Multiple children may not be listed on the [ICWA-030](#) unless they have the same birth parents.

- The [ICWA-030\(A\)](#), *Attachment to Notice of Child Custody Proceedings for Indian Child* is to be used only if all tribes served were not listed on the [ICWA-030](#).

The [ICWA-030](#), [ICWA-010\(A\)](#), petition, the most recent court order, and child’s birth certificate (if available) **must be mailed** to the previously mentioned parties by Certified Mail, Return Receipt Requested, or by Registered Mail, Return Receipt Requested. Registered Mail, Return Receipt Requested, is the only option when noticing anyone outside of the United States. All parties must be in receipt of the notice and other documents at least 10 days prior to the Court hearing.

The [ICWA-030](#) must be used to notice on Indian child custody proceedings, **until**:

- Court finds that proper notice has been sent; or
- The Tribe acknowledges in writing that the child is not a member and is not eligible for membership and the Court determines that ICWA does not apply; **or**
- It has been more than 60 days since the tribe received the notice and it has not responded and the Court determines ICWA does not apply; **or**
- The Tribe intervenes; **or**
- The Tribe acknowledges in writing that the child is a member of the Tribe or is eligible for membership. **When a federally recognized tribe confirms that a child is Native American, the tribe shall be noticed for all future hearings regarding the Indian child.**
- When one of the requirements above is met, the [ICWA-030](#) is no longer used and no further notice is required for the BIA.

Notice Timeframes

Detention Hearing

Since there is not much time between the decision to proceed to Juvenile Court and the Detention Hearing, the assigned SW will make every effort to advise the tribe verbally (in person or by

telephone) and/or via email of the Detention Hearing as soon as is practically possible. The best scenario would be that the tribe is represented at the Imminent Risk Team Decision Making (TDM) meeting, and advised of the hearing along with all the other participants.

Formal, written, notice must be given as soon as possible after the filing of the petition.

Proof of Notice must be filed with the court within 10 days after the filing of the petition.

All Hearings Post-Detention

The following parties must **receive** the notice that is required for each specified hearing as outlined below:

- Tribe(s)-All tribes in which the child may claim or may be eligible for membership **must receive notice 10 days prior to the hearing.**
 - When a federally recognized tribe confirms that a child is **an Indian child**, the tribe must be noticed for all hearings regarding the Indian child.
 - The **assigned SW is responsible for ensuring (either by completing themselves and/or asking the ICWA support staff) that the Tribe is sent full discovery, the court reports and the Findings and Orders indicating ICWA is applicable** along with the required notice.
- Bureau of Indian Affairs (BIA)-**Must receive notice at least 10 days prior to the hearing.**

NOTE: Tribes are noticed for as long as the Juvenile Dependency Court case remains open.

Proof of Notice

The designated ICWA **support staff** shall file the following with the court prior the hearing:

- Copies of notices sent – [ICWA-030](#); [ICWA-030A](#); [ICWA-010\(A\)](#), Petition, regular notice of hearing;
- All return receipts; and
- All responses from the tribes **and** BIA.