

# Protocol for Working with Indian Families, Children, and Tribes

(Revised 11/8/19)

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## Introduction

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### Purpose

This protocol is applicable to all Child Welfare Services (CWS) referrals and cases that involve children who are of Native American/Alaskan Native descent or who **may** be of Native American/Alaskan Native descent. The purpose of the protocol is to support CWS in decision-making that achieves compliance with the Indian Child Welfare Act (ICWA), which promotes positive outcomes for Native American families. This protocol is intended to be a compass of best practices for SWs in San Diego County.

For specific policies surrounding investigations and ICWA please refer to ER - Investigations.

This protocol supports the common goals of:

- keeping Native American families together when safe and possible;
- ensuring the safety and wellbeing of Indian children through preventative and ongoing active efforts;
- ensuring timely permanence of Indian children by providing staff with guidelines on how to provide appropriate services to Indian families; and
- promoting collaborative and respectful relationships among all entities serving Indian families.

All of the goals listed align with the County of San Diego Child Welfare Services Safety Enhanced Together (SET) practice framework by emphasizing efforts to safely stabilize and preserve Native American families while appreciating the family's culture and cultivating shared responsibility with our community partners.

This protocol is the product of the County of San Diego Health and Human Services Agency and the 7<sup>th</sup> Generation Workgroup's commitment to promote collaborative efforts between CWS and tribal entities through the effective implementation of ICWA and protection of Indian children at risk for abuse or neglect while improving family preservation services to Indian families.

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### Background

One key to the Indian Child Welfare Act (ICWA) compliance is the timely identification of Indian children and families. Early identification of an Indian child is the best assurance that CWS can meet ICWA's objectives and offer culturally-appropriate services that will maximize the family's chances of staying together.

ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of a federally-recognized tribe or who is eligible for membership in such a tribe. CWS 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).)

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**Background (cont.)**

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. It was created to address the following issues:

- Large numbers of Indian children were being removed from their families by state courts and county social services agencies and placed in non-Indian homes and institutions;
- Indian children who were cut off from their tribal communities and cultures often developed behavioral and emotional problems later in life; 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, ICWA imposed minimum federal procedural protections for Indian children involved in the dependency system or otherwise facing removal from parental custody. ICWA:

- Protects the best interest of Indian children;
- Promotes the stability and security of Indian tribes and families by establishing 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
- Provides assistance to Indian tribes in the operation of children and family services programs.

Today, while ICWA contains procedures that help ensure that a child stays within an Indian community, it also can facilitate a team approach to improve outcomes and provide access to resources for agencies and tribes working with high-risk Indian families. For example, using ICWA as a basis for collaboration can provide a child with access to tribal resources to help implement service plans, develop safety networks, improve self-esteem and emotional wellbeing, avoid generational post-traumatic stress disorder, and expand otherwise-limited foster care placement prospects. ICWA compliance also helps ensure that a dependency proceeding is not subsequently invalidated by the Juvenile Court or overturned on appeal, which could place a child at greater risk for abuse and/or neglect and undermine permanency efforts.

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**Authority Overview**

ICWA governs the state court proceedings for determining the placement of an Indian child when that child is removed from the custody of their parent or Indian Custodian. In 2006, legislation was passed in California (SB 678), which codified into state law various provisions of the federal ICWA, the BIA Guidelines for state courts, and various appellate court decisions, thus affirming California's interest in protecting Indian children.

The proper implementation of federal 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 authority for this protocol is consistent with California Rules of Court, rule 5.505.

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**Federal, State, and Local Mandates**

**ICWA, 25 United States Code Section 1901-1963**, provides legal protections designed to prevent the breakup of Indian families.

Code Section/ Rule of Court	Title	Purpose
ICWA, 25 CFR Part 23		Federal regulations that, among other things: <ul style="list-style-type: none"> <li>• assist in the administration of tribal social services</li> <li>• outline notice procedures and process for court-appointed counsel.</li> </ul>
25 United States Code Sections 3201-3210	Indian Child Protection and Family Violence Prevention Act (1990)	Federal law stating that there is no prohibition to CWS communicating with tribal representatives to discuss possible tribal affiliation and coordination of services in referrals/cases where there is reason to believe that an Indian child is involved.
CA Family Code 7907.3		State law stating that the Interstate Compact on the Placement of Children 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 under Section 1911 of ICWA.
California Rules of the Court, Rule 5.664		State rule explaining the protocol for ICWA court hearings.
California Rules of Court, Rule 5.664 (d)		State Rule mandating that the Juvenile Court and county child welfare services inquire whether a child is or may be an Indian child.

**State Directives**

**The California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Division 31-515-520**, contains the state regulations regarding ICWA provisions and policies for the placement of Indian children. CDSS has also issued the following related All-County Letters and All-county Information Notices:

- CDSS All County Letter [19-71](#), Tribally Approved Homes (2019).
- CDSS All County Letter [18-140](#), Tribal Access to Child Welfare Case Records (2019).
- CDSS All County Letter [17-62](#), New Authorities for Tribal Background Checks (2017).
- CDSS All County Information Notice [I-40-10](#) Expert Witness (2010).
- CDSS All County Information Notice [I-86-08](#), clarifies the use of tribally approved homes as placement options for Indian children (2008).
- CDSS All County Information Notice I-23-06, CDSS auditing of relative and non-related extended family member approvals for placement (2006).  
CDSS All County Information Notice [I-43-04](#) , ICWA frequently asked questions (2004).
- CDSS All County Letter, [10-47](#), Tribal Customary Adoption (2010).
- CDSS All County Letter [10-17](#), Tribal Customary Adoption (2010).
- CDSS All County Letter [08-02](#), ICWA changes in state law.  
CDSS All County Letter [05-13](#), relative and non-related extended family member approvals for placement (2008).

**Welfare and Institutions Code (WIC) Provisions**

WIC Section	Purpose
<b>224</b>	<p>Describes:</p> <ul style="list-style-type: none"> <li>• California’s interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe</li> <li>• California’s commitment to protecting the essential tribal relations and best interest of an Indian child by:               <ul style="list-style-type: none"> <li>○ promoting practices in accordance with ICWA and other applicable laws that are designed to prevent involuntary out-of-home placement</li> <li>○ whenever placement is necessary or ordered, placing the child, whenever possible, in a placement that reflects the unique values of the child’s tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child’s tribe and tribal community.</li> </ul> </li> </ul>

**Welfare and  
Institutions Code  
(WIC) Provisions  
(cont.)**

<b>WIC Section</b>	<b>Purpose</b>
<b>224.1</b>	Contains definitions according to Section 1903 of the ICWA and Indian child membership in more than one tribe and factors that need to be considered when determining which tribe the child has more significant contact with.
<b>224.2</b>	Explains the notice requirement for an Indian child custody proceeding, including notice to interested parties and proof of service. Explains the difference between “reason to know” and “reason to believe” and lays out the minimum requirements for sufficient inquiry and due diligence.
<b>224.3</b>	<ul style="list-style-type: none"> <li>• States CWS’s affirmative and continuing duty to inquire about a child’s Indian status when the child is in, or is at risk of entering, foster care by interviewing parents, Indian custodian, and extended family members to gather the information required to properly notice the tribe(s)</li> <li>• Explains circumstances that may provide reason to know that the child is an Indian child and if new information is obtained regarding the child’s Indian heritage, the tribe, BIA must be re-noticed per WIC 224.2 with the new information, even if the court already found that ICWA does not apply.</li> </ul>
<b>224.4</b>	The Indian child’s tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding.
<b>224.5</b>	In an Indian child custody proceeding, the court will 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.
<b>224.6</b>	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 content of testimony.



**Welfare and  
Institutions Code  
(WIC) Provisions  
(cont.)**

<b>WIC Section</b>	<b>Purpose</b>
<b>290.1</b>	Notice requirement for when a child is to be retained in custody, initial petition hearing.
<b>290.2</b>	Notice requirement for initial petition hearing, petition filed.
<b>291</b>	Notice requirement for jurisdictional, pretrial, adjudication, or disposition hearing.
<b>291 and 292</b>	Notice requirement for cases where child(ren) is with parent or guardian.
<b>293</b>	Notice requirement for 366.21, 366.22, or 366.25 hearings.
<b>294</b>	Notice requirement for 366.26 hearing.
<b>295</b>	Notice requirement for review of permanent plan hearing pursuant to, 366.3, non-minor dependent review hearings pursuant to 366.31, and termination of jurisdiction hearings held pursuant to 391.
<b>305.5</b>	The right of a parent, Indian custodian, and Indian tribe to petition for the Indian child custody proceeding to be transferred to the jurisdiction of the child's tribe, also explains good cause to deny the petition.
<b>3.06.6</b>	States that the court may permit non-federally recognized tribes to participate in the proceeding upon request of the tribe.
<b>361.4</b>	States that the home of every prospective caregiver that is not a licensed or certified resource parent must be visited to assess its appropriateness prior to placing the child in the home, which includes criminal history clearances.
<b>361.7</b>	Notwithstanding 361.5, definition of active efforts must be 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.

**Welfare and Institutions Code (WIC) Provisions (cont.)**

<b>WIC Section</b>	<b>Purpose</b>
<b>361.31</b>	Placement preference for Indian children. Adoptive placement for Indian children.
<b>366.24</b>	Tribal Customary Adoption requirements.
<b>366.26</b>	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.
<b>366.3</b>	There must be a sufficient basis for termination of parental rights or the court may find a compelling reason for determining that termination would be detrimental to the child.
<b>16507.4(b)(3)</b>	Explains voluntary family reunification services and procedure to follow for Indian children.

**Indian Specialty Unit (ISU) Overview**

The purpose of the Indian Specialty Unit (ISU) is to:

- promote the government to government relationship between the tribes and CWS;
- promote safety, permanency, and wellbeing of children in the Indian community; and
- keep all Indian children connected to their family, tribe and culture.

The ISU is composed of CWS SWs who provide culturally responsive case management services in conjunction with tribal services to families that have been identified as Native American. The SWs in the unit receive specialized and culturally-responsive training to assist them with their duties.

Indian tribes have kinship relationships, customs, resources and tribal traditions that may be unique for that tribe. SWs who work with Indian children and tribes receive specialized and culturally responsive training and supervision to promote familiarity with these special customs, traditions and relationships as well as specific laws regarding Indian children.

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## ISU Assignments

Families with children identified as Native American/Alaskan Native when the children are brought into custody will be assessed by the ISU PSS for acceptance into the unit.

It is not uncommon for a family with an Indian child to be initially served in another CWS region. In those cases, the ISU PSS will be available for consultation as needed. Once it is determined that the removal of an Indian child is necessary, the case may be assigned to the ISU.

Indian children generally not assigned to the ISU are those in Adoptions or at San Pasqual Academy. Other units outside of ISU will receive specialized ICWA training and regularly consult with the ISU PSS.

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## Spirit of ICWA

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 CWS has reason to believe that 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 that CWS will apply the best practices reflected in ICWA to **all Native American** families and children even when ICWA does not technically apply. Following the Spirit of ICWA helps ensure better outcomes for **Native American** children and families.

Spirit of ICWA services may include:

- the family being served through the ISU;
  - CWS working with the tribe and other tribal agencies to provide culturally responsive services.
  - making active efforts to engage families affected by historic government-sanctioned trauma in reunification efforts with representatives of local and state governments (i.e., county child welfare agencies and state courts); and
  - placing children in homes with extended family members or other Indian or tribal families. If there are none available, ensuring the child is placed in a resource home dedicated to promoting the child’s connections to his or her extended family, tribal culture and tribal community.
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## Local Tribal Social Services

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### **Southern Indian Health Council**

Southern Indian Health Council (SIHC) provides social services including ICWA services for seven federally recognized tribes in the South East region of San Diego County. The consortium tribes affiliated with SIHC are:

1. Barona Band of Diegueño Mission Indians
  2. Campo Band of Diegueño Mission Indians
  3. Ewiiapaayp Band of Kumeyaay Indians
  4. Jamul Indian Village
  5. La Posta Band of Diegueño Mission Indians
  6. Manzanita Band of Diegueño Mission Indians
  7. Viejas Band of Diegueño Mission Indians.
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### **Indian Health Council Inc.**

Indian Health Council (IHC) provides social services to Native American families in the North Eastern region of San Diego County, including ICWA services for seven of the nine federally recognized tribes. The seven consortium tribes receiving ICWA services through IHC are:

1. Inaja-Cosmit Band of Diegueño Mission Indians
2. La Jolla Band of Luiseño Indians
3. Los Coyotes Band of Cahuilla & Cupeño Indians
4. Mesa Grande Band of Diegueño Mission Indians
5. Pauma Band of Luiseño Mission Indians
6. Rincon Band of Luiseño Mission Indians
7. San Pasqual Band of Diegueño Mission Indians

**NOTE:** For information regarding non-local tribal social services, please consult with ISU.

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### **Tribes That provide Their Own ICWA Social Services**

Pala Child and Family Services, the Iipay Nation of Santa Ysabel and Sycuan Band of the Kumeyaay Nation have social services departments and provide ICWA social services to families affiliated with their tribes.

**NOTE:** Families from Pala and Santa Ysabel Tribes can receive services from both SIHC and IHC, but ICWA advocacy services are provided from the tribal designated representative not IHC or SIHC.

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### **Indian Health Council Inc., Child Assessment Center**

The Indian Health Council Inc.'s Child Assessment Center (CAC) serves as an alternative to Polinsky Children's Center (PCC) and Child Assessment Network North (CANN) and offers the following services:

- Provides assessment for new intakes and change of placement for Native American children
  - Provides transportation services to resource family homes
  - Provides a medical evaluation to determine the physical well-being of a child at intake or change of placement
  - Coordinates any necessary follow-up medical appointments
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**CWS and Tribal Relationships**

CWS is dedicated to providing high quality and culturally responsive services to all families in San Diego County. To support this goal, CWS:

- interacts with local tribal service providers as vital partners in ensuring the safety, permanency and well-being of tribal children;
  - participates in Tribal STAR/7<sup>th</sup> Generation meetings to support good working relationships, solve any systemic problems, and promote the well-being of Indian families;
  - supports Tribal STAR training for all social workers;
  - attends ICWA conferences; and
  - participates in ICWA state-wide meetings.
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### When ICWA and State Indian Child Laws Apply

The ICWA and state Indian child laws apply to Indian child custody proceedings when:

- the 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;
- parental rights of the Indian child's parent(s) may be terminated;
- the 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 home;
- an Indian child is involved in an involuntary child custody proceeding;
- a Tribal Customary Adoption may be pursued.

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### Definition of an Indian Child

The ICWA and state Indian child law define an "Indian child" as an unmarried person under the age of 18 who:

- is a member of a federally-recognized Indian tribe; or
- is eligible for membership in a federally-recognized Indian tribe **and** is the biological child of a member of a federally-recognized Indian tribe (25 U.S.C. §1903; WIC § 224.1 (a)).
- is an unmarried person who is 18 years of age or over, but under 21 years of age, who is a member of an Indian tribe or eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe, and who is under the jurisdiction of the dependency court unless that person or his or her attorney elects not to be considered an Indian child for the purposes of the Indian child custody proceedings.

It is important to note that ICWA focuses on "membership," not "enrollment" or "registration." Information that the child is neither enrolled nor eligible for enrollment is **not** determinative of a child's Indian status until and unless the tribe confirms **in writing** that enrollment is a prerequisite for membership (WIC § 224.2(h)). Children may be a member or eligible for membership in a tribe, even if one or both parents are not members. A child should be identified, at least provisionally, as an "Indian child" whenever a parent identifies themselves or the child as a member of a tribe or eligible for membership, or when other factors indicate such membership or eligibility for membership.

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**Tribe Determines Membership**

It is the exclusive determination of the tribe whether a child is or is not eligible to be a tribal member. Depending on the tribe's membership laws, enrollment may or may not be necessary for the child to be considered a member.

It is not appropriate for CWS or the court to engage in an analysis of tribal law or custom to determine whether a tribe's determination that a child is a member or eligible for membership is correct. As a matter of tribal sovereignty, the tribe has the exclusive jurisdiction to make such determinations.

Because tribal membership laws can be amended from time to time, it is important to confirm an Indian child's membership status even when a full sibling has previously been determined to be (or not to be) a tribal member or eligible for membership.

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**Indian Custodian**

An Indian Custodian is an Indian person who has custody of an Indian child but is not the child's biological parent; has the right and responsibility to make decisions about a child's day-to-day care, well-being, and overall best interest, has rights under the Indian Child Welfare Act. An Indian Custodian has physical custody or legal custody or both, under any applicable tribal law or tribal custom or state law.

In order for someone to be considered an Indian Custodian, the following criteria must be met:

- the child must be an "Indian child" as defined by the ICWA **and**
- the custodian must be an "Indian person" **and**
- the custodian must receive custody of the child in one of the following specific ways:
  - the child's parent transferred the temporary physical care, custody and control of the child to the Indian Custodian **or**
  - custody is obtained under tribal law or tribal custom **or**
  - custody is obtained under state law (such as guardianship)

**NOTE:** A written document is not required by law for someone to be designated as an Indian Custodian. SWs should not rely on the absence of a written document indicating someone an Indian Custodian who otherwise meets the criteria above.

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**Child's Connection to Tribal Community**

Evidence-based studies confirm that fostering a child's connections to their extended family network, community, or culture result in better outcomes for the child. 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 or not if:

- the Indian child was in the physical custody of an Indian parent or Indian Custodian at the beginning of a child custody proceeding;
  - parental rights have been terminated;
  - the Indian child has lived on an Indian reservation;
  - the Indian child or their parents have established or maintained strong social or cultural connections with their tribe; or
  - any party objects to involvement and connection with the child's tribal community.
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## Rights of Federally Recognized Tribes

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<b>Right to Intervene</b>	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.”
<b>Full Participation Versus Limited Participation</b>	<p>An intervening tribe may fully participate as a party to a proceeding.</p> <p>In addition, a tribe may choose to monitor a case and participate in a limited way under California Rules of Court rule.</p>
<b>Access to Records</b>	Meaningful collaboration with tribes is fundamental for compliance with the ICWA. If a child is an Indian child as defined by ICWA, the SW will share case and referral records with the tribe’s child welfare representative in order to achieve best outcomes for the Indian child. Federally recognized tribes are sovereign entities and should be treated equally as other governmental entities.
<b>Right to Transfer to Tribal Court</b>	<p>The Indian tribe has the right to exercise tribal jurisdiction and ask that the case be transferred to tribal court as defined by the tribe. If at any stage of an Indian child custody proceeding, the Agency becomes aware that the child is already a ward of a tribal court or resides or is living within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings, the SW will notify, within 24 hours, the tribe and the tribal court of the case. Upon receiving confirmation from the tribe that the child is a ward of a tribal court or subject to the tribes exclusive jurisdiction, the court will dismiss the case and ensure that the tribal court is sent all information regarding the proceeding, including, but not limited to, the pleadings and any court records. If an emergency removal is necessary to protect the child from imminent physical damage or harm, the court can order the child be detained on an emergency basis.</p> <p>In some cases, an out-of-state tribe and a handful of California tribes (tribes that span state borders) may have exclusive jurisdiction over the child. In such cases, transfer of the case is mandatory.</p>

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**Additional Rights**

The Indian tribe has the following additional rights:

- To be notified about the Indian child custody proceeding
- To ask for up to 20 more days to get ready for a hearing
- To deny a parent or Indian custodian request for the case to be moved to tribal court as defined by the tribe
- To look at the documents about the case that the court has on file
- To see records kept by the State on the placement of tribal children
- To assert certain tribal laws or customs to the Indian child custody proceeding, e.g. definition of “extended family”
- To assert ICWA placement between the different categories of placement preferences

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**Interstate Compact on the Placement of Children (ICPC)**

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. ICPC continues to apply to all cases in which the county Court retains jurisdiction.

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**Federally Recognized Tribes in San Diego County**

The following are the 17 federally-recognized Indian tribes located in San Diego County:

- Barona Band of Diegueño Mission Indians
  - Campo Band of Diegueño Mission Indians
  - Ewiiapaayp Band of Kumeyaay Indians
  - Lipay Nation of Santa Ysabel
  - Inaja-Cosmit Band of Diegueño Mission Indians
  - Jamul Indian Village
  - La Jolla Band of Luiseño Indians
  - La Posta Band of Diegueño Mission Indians
  - Los Coyotes Band of Cahuilla & Cupeño Indians
  - Manzanita Band of Diegueño Mission Indians
  - Mesa Grande Band of Diegueño Mission Indians
  - Pala Band of Mission Indians
  - Pauma Band of Luiseño Mission Indians
  - Rincon Band of Luiseño Mission Indians
  - San Pasqual Band of Diegueño Mission Indians
  - Sycuan Band of the Kumeyaay Nation
  - Viejas Band of Diegueño Mission Indians
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## Non-Federally Recognized Tribes

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### **Court Determination**

Pursuant to WIC Section 306.6, in cases where ICWA will not apply to a child custody proceeding when a child is a member of or eligible for membership in a non-federally recognized tribe, the court may allow the child'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, placement preference, and the testimony of a qualified expert witness are not required for these cases. See [Spirit of ICWA](#) section above.

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### **Notice of Proceedings**

Non-federally recognized tribes are not entitled to notice of the proceedings as a matter of law. However, under state Indian child 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. This is limited to one tribe with whom the child has the most significant contact with.

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### **Participation in Court Proceedings**

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
  - Perform other duties and responsibilities as requested or approved by the court
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### **Request for Placement**

When a non-federally recognized tribe requests that their placement recommendations be considered, such recommendations may be considered by CWS, but the placement would still be subject to licensing and/or relative approval standards. The purpose of allowing non-federally recognized tribes to participate in child welfare proceedings is that they can assist the court in making decisions that are in the best interest of the child. The tribe can inform the court about placement options, identification of relative or non-related extended family members, and help identify Indian specific services and programs available to the child.

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### **Notice of Proceedings**

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

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## Other Eligibility

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### **Affiliation with More Than One Tribe**

When 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 will provide the tribes the opportunity to determine which tribe will be designated as the Indian child's tribe for purposes of the Indian child custody proceeding. If the tribes reach an agreement, the agreed-upon tribe will be designated as the Indian child's tribe. If the tribes are unable to reach an agreement, the Court will designate the tribe with which the child has the most significant contact as the Indian child's tribe. The Court's determination of membership does not serve any other purpose than for the purposes of ICWA. (Welf. & Inst. Code § 224.1(e).)

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### **Court Report**

To assist the Court in making an informed decision regarding the membership of an Indian child, the Court report must contain the following information:

- Length of residence on or near the reservation of each tribe and frequency of contacts with each tribe
  - Child's participation in activities of each tribe
  - Child's fluency in the language of each tribe
  - Whether there has been a previous adjudication with respect to the child by a court of one of the tribes
  - Residence on or near one of the tribes' reservation by the child's relatives
  - Tribal membership of custodial parent or Indian custodian
  - Interest asserted by each tribe in the child custody proceeding.
  - The child's self-identification
  - Preference of the parents for membership of the child
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### **Indian Child is a Member of One Tribe**

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.

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## Inquiry

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### Initial Contact

Inquiry of Native American heritage should be assessed for every family served by CWS during initial contact (including the Child Abuse Hotline) and ongoing contact with the reporting party, youth, and families, especially when the child is removed from the home and placement is being considered or is imminent. Inquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect (WIC 224.2 (e)). For sample questions to ask parents and/or relatives to determine Indian heritage, see Appendix 3 in the ICWA Noticing Manual.

Because of historic reasons to distrust government agencies, Native American parents and families may hesitate to disclose Indian ancestry. It is recommended that you initiate your inquiry with a reassuring statement, such as: "If you or your children are Native American/Alaskan Native there may be additional rights and services available to you."

**NOTE:** It is important to inquire about the way each individual person or family identifies in relation to their tribe by keeping in mind that they may refer to themselves as Indian, Native, Native American, Alaskan Native, etc.

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### Completion of Indian Child Inquiry Attachment

Court form ICWA-010(A) Indian Child Inquiry Attachment **must** be completed by the detaining SW to be filed with the petition. SWs have an **affirmative and ongoing** duty to inquire if the child is an Indian child, **in all WIC 300 cases**, not just when there is reason to believe the child may be an Indian child. 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.

Juvenile Court parties should be aware that any person who knowingly falsifies or conceals facts regarding a child's Indian status is subject to court sanctions. (WIC § 224.3(e).)

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**Determining Whether a Child Is an Indian Child**

The circumstances that may provide “reason to know” the child is an Indian child include, **but are not limited to:**

- 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. The parent/family asserting Indian ancestry should assist CWS in filling out a genogram or ancestry chart, and the SW should add it to the report if required by Juvenile Court.
- the residence or domicile of the child, the child’s parents, or Indian custodian is in a predominantly Indian community.
- 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 Indian Health service.
- The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child.
- The court is informed that the child is or has been a ward of the tribal court.
- The court is informed that either the parent or the child possesses an identification card indicating membership or citizenship in an Indian tribe.

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**Further Inquiry**

Be sure to engage in further inquiry if there is reason to believe, that the child has any Native American (American Indian) ancestry. Due to the historical fact that tribes occupied North America prior to the establishment of the U.S. borders, even a claim of Canadian or Mexican Indian ancestry should result in further inquiry by the SW. Further inquiry includes, but is not limited to, all of the following:

- Interviewing the parents, Indian custodian, and extended family members
- Contacting the [BIA](#) or the [State Department of Social Services](#) for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership.
- Contacting the tribe or tribes and any other person that may reasonably be expected to have information regarding the child’s membership, citizenship status or eligibility. Contact with a 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 child and the case.

Document the name and relationship of the person providing the information and their response. Be sure to ask for the name and contact information for any relative who may have additional family history information than that known by the parents or Indian custodian. Interview such person(s) as part of your further inquiry.

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**Membership of Child with Tribe**

When a child eligible for membership has been identified by their tribe, the SW should pursue with tribal representatives, the child's attorney and parents whether a membership application should be submitted on the child's behalf. Generally, it is in the child's best interest to complete the tribal membership process as early as possible. The SW 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 SW 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 SW should work with the parent/family claiming possible membership and the tribe and inquire about each tribe's membership process and work with the tribal representative(s). SWs should facilitate when possible, and ensure that tribal membership is obtained at the earliest possible time and that the court is appraised of the child's progress toward membership status.

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**Document Efforts**

The Agency has an affirmative and continuing duty to inquire whether a child is or may be an Indian child at initial contact and throughout the life of the CWS case. Efforts made to determine whether the child is an Indian Child will be documented in the Contact Notebook, Case Plan, and Court Report. The SW will document all efforts to inquire about ICWA in the Detention Report, Jurisdiction/Disposition Report and every Status Review Report thereafter. Efforts must include but are not limited to:

- interviewing parents and extended family members and others;
- contacting the BIA and CDSS for assistance in identifying and contacting relevant tribes;
- contacting the tribes including telephone, fax and email contact with agents for receipt of notice.

For sample questions to ask parents and/or relatives to determine Indian heritage, see Appendix 3 in the ICWA Noticing Manual.

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## Active Efforts

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### **Keeping Indian Families Together**

ICWA helps to keep children connected to their families and tribes by requiring child welfare agencies to make active efforts to keep Indian families together. A SW must provide an Indian family with active efforts, which may include culturally appropriate services not typically required in mere reasonable efforts/non-Indian child cases. Active and early participation and consultation with the child's tribe in all case planning decisions is the key to active efforts. Think of the tribe as a partner in identifying culturally appropriate service providers and resources, placement options and potential direct assistance in service delivery.

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### **When Active Efforts Must Be Offered**

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Active efforts begin from the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be placed outside the custody of either parent or Indian custodian in order to prevent removal. Active efforts continue throughout the case. Below are examples of when active efforts are required:

- Prior to removal of an Indian child
  - To prevent or eliminate the need for removal of an Indian child
  - To make it possible for an Indian child to return home
  - To complete whatever steps are necessary to finalize a permanent plan for an Indian child
  - Prior to termination of parental rights
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### **San Diego County Best Case Practices**

The Indian Specialty Unit (ISU) works in collaboration with local tribes to ensure active efforts are taking place for native children and families. Below are some examples of how collaboration and engagement can ensure active efforts are occurring with native families:

- Child Protection Team Meetings with local tribal social services programs
  - Joint Emergency Response investigations
  - Referring families to Indian Health Clinic services
  - Native youth support services
  - Tribal social service agencies team up with ISU and provide mandated reporter trainings to the tribal programs and community.
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**Description of Active Efforts**

Active efforts are provided to address unresolved grief and loss and historical trauma that Indian families have endured and continue to experience today. The active efforts requirement recognizes that generations of adverse federal and state laws and policies have had a devastating effect on tribal communities and Indian families, resulting in the need for additional trust-building before many Indian families will actively engage in services mandated by government agencies, including child welfare agencies and state courts.

Active efforts are more than reasonable efforts required by Title IV-E of the Social Security Act.

Active efforts must be provided and prove 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. Active efforts include providing culturally appropriate remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and will be assessed on a case-by-case basis. Active efforts will 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 will also utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.

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**Guidelines for Providing Active Efforts**

WIC section 224.1(f) sets forth examples of active efforts which include but are not limited to:

- conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
  - identifying appropriate services and helping the parents overcome barriers, including actively assisting the parents in obtaining those services;
  - identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the child and family in Child and Family Team meetings, permanency planning and resolution of placement issues;
  - conducting a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
  - offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's tribe;
  - taking steps to keep siblings together whenever possible;
  - supporting regular visits with parents or Indian custodians in the most natural setting possible, as well as a trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety and welfare of the child;
  - identifying community resources, including housing, financial assistance, transportation, mental health and substance abuse services, and peer support services, and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
  - monitoring progress and participation in services;
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**Guidelines for Providing Active Efforts (cont.)**

- considering alternative ways to address the needs of the Indian child’s parents and, where appropriate, the family, if the optimum services do not exist or are not available;
- providing post reunification services and monitoring.

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**Duration of Active Efforts**

SWs will provide active efforts when CWS knows or has reason to know a child is an Indian child and will be discontinued only if the Juvenile Court makes a subsequent finding that ICWA does not apply.

See [Spirit of ICWA](#) section above.

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## Placing an Indian Child in Foster Care

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### **Initial and Ongoing Placement**

When considering initial and continued placement, the SW will make every effort to place the child according to the ICWA placement preferences. Indian children must be placed in the least restrictive setting resembling a family situation, in which the child's special needs are met, and within reasonable proximity to the child's home.

The removal of an Indian child from their family and placement in foster and/or adoptive homes will 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. The placement will be assessed for consistency with placement preferences each time there is a change in placement (WIC 361.31(a)).

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### **Placement Preference**

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:

1. a member of the child's extended family (according to the ICWA "**extended family member**" w be defined by the law or custom of the Indian child's tribe, or, in the absence of such law or custom, will 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
  2. a home licensed, approved, or specified by the Indian child's tribe; or
  3. an Indian home licensed by an authorized non-Indian licensing authority; or
  4. 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.
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### **Good Cause to Modify Placement Preference Order**

The order indicated above must be followed anytime an Indian child is placed in foster care, when there is a subsequent change of placement, or when the child is placed for adoption, unless there is good cause to modify the order of preference. If a preferred placement is not available for an Indian child, active efforts must be made to place the child with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe. If placement preferences are not followed or recommended, the reasons why must be provided on the record either orally or in writing. The party making the recommendation not to follow placement preferences has the burden of proof. Placement preferences will be followed from detention forward.

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**Good Cause to Modify Placement Preference Order (cont.)**

The final decision and responsibility is with the Juvenile Court to determine whether there is good cause to deviate from the ICWA placement preferences. The SW is responsible for presenting all relevant information. "Good cause" may include:

- the unavailability of a preferred placement, after a diligent search has been conducted;
- the desires of the Indian parent and child, in consultation with the tribe; and/or
- 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.

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**Adoptive Placement Preference**

Unless there is good cause to the contrary, or the child's tribe establishes a different order of preference by resolution, the adoptive placement preference will be with:

1. A member of the child's extended family
2. Other members or citizens of the Indian child's tribe;
3. Other Indian families, including families of unwed individuals; or
4. Other permanent placement approved by the tribe.

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**Tribally-Approved Homes**

A **tribally-approved home (TAH)** is a home that has gone through a tribal approval process as defined by the Tribe or tribal agency approving the home. ICWA allows federally recognized tribes to establish their own licensing/approval standards and to approve homes for the purpose of foster placement and pre-adoptive placement of an Indian child under county jurisdiction. TAH homes may differ in some aspects from those licensed or approved in accordance with State standards. When an Indian child is involved in a dependency action where the child is at risk of entering foster care, tribally approved homes should be considered. Additionally, tribes are not required to have a Title IV-E agreement in order for counties to be authorized to use tribally approved homes for the placement of children under county care.

Tribes are exempt from the Resource Family Approval Process, but must meet Title IV-E federal standards for approval when conducting background checks. Tribes will continue to approve families according to their current existing standards however, they may choose to have families approved through the RFA process.

TAH are deemed equivalent to homes that are licensed or approved by the State. **With the exception of background clearance requirements**, TAH are not subject to state licensing approval standards. Tribes have the independent authority to approve foster homes using their own socially and culturally appropriate standards pursuant to ICWA. California has further affirmed in state law that a tribally approved home is not subject to state licensing requirements when the child involved is eligible under ICWA and the placement is with a relative or extended family member of the child, or in a home licensed, approved, or specified by the Indian child's tribe. (Health and Safety Code 1505).

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Additionally, Tribes are not required to complete the SOC 817 or SOC 818 on TAH.

When a tribe will complete its own assessment and approval, the CWS Placement SW will refer to the Relative and Non-Relative Extended Family Member Approvals for instructions on completing the necessary forms.

**Prior to placing a child in a TAH that has been approved by a federally recognized tribe without authority to perform background checks, the CWS SW will:**

- obtain a tribal council resolution or letter from the tribe identifying the prospective foster or adoptive parents and designating the home as tribally- approved for the child.
- complete a criminal records check and Child Abuse Registry background check on ALL individuals residing in the home over age eighteen. 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.
- obtain a [LIC 508D Out of State Disclosure and Criminal Record Statement](#) from each adult in the home. If an individual has lived out of State within the last five years, the Child Abuse Registry in the other State must also be checked, provided that State maintains a registry, by completing and submitting a [LIC 198B Out of State Child Abuse-Neglect Report Request](#). A list of contacts for registries in other States can be found at <http://www.cclid.ca.gov/res/word/AWStateContacts.doc>
- check the Child Welfare Services/Case Management System (CWS/CMS) for any history involving the proposed caregiver, or others residing in the home. If CWS history is found, assess with supervision the suitability of the proposed caregiver/placement. In the event that an individual who has been approved or licensed by a tribe has a criminal record, the CWS SW must follow the same guidelines and apply the same standards for criminal exemptions as they would any other relative/NREFM home.

**Prior to placing a child in a TAH that *has* been approved by a federally recognized tribe with authority to perform background checks, the CWS SW will:**

- Obtain a tribal council resolution letter from the tribe identifying the prospective foster or adoptive parents and designating the home as tribally-approved for the child. The resolution letter must reflect the following:
    - That the tribal agency has completed a criminal record background check of the prospective foster or adoptive parent(s), any adult over 18 who resides in the TAH, and any person who has familial or intimate relationship with any person living in the TAH, and/or any employee of the tribal agency who may have contact with the child(ren)\_placed in the home;
    - That the tribal agency has agreed to report to the CWS SW, within 24 hours of notification to the tribal agency, by the California Department of Justice of a subsequent state or federal arrest or disposition involving any adult associated with the TAH where the child(ren) is placed; and
    - That if any individual was granted a criminal record exemption; the exemption was evaluated in accordance with the standards and limitations and was not granted to an individual ineligible for exemption.
  - Document in CWS/CMS the information from the tribe's home approval verification.
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**Tribally-Approved Homes (cont.)**

Tribal agencies that perform their own background checks are entitled to access the CWS case information for the purpose of evaluating the CACI results. SW will assist the tribal agencies with their request for records to avoid delays in the approval process of the tribal home and potential placement of an Indian child.

Tribal agencies do not have authority to conduct emergency placement evaluations. Tribes will continue to rely on CWS to conduct emergency placement background checks when an emergency placement is needed and a tribal home has not been approved in advance.

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**Tribally Specified Homes**

A **Tribally Specified Home** is a home designated as a preferred placement option for an Indian child by the Indian child's tribe, not formally approved or licensed by the tribe. In this case, the home must be approved pursuant to the Resource Family Approval standards.

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**Court Determines Placement**

Placing children in familiar and safe homes is a shared goal of CWS and the tribes. If there is reason to believe that the placement would not be a safe one, the SW should discuss the concern with the tribe and allow for possible correction of the issue of concern. The tribe may also contact the SW to voice their 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 into a tribally-approved home.

Instances that may cause concern for the SW are those that potentially place the child in situations that are dangerous or do not provide adequate protection. For example, if an aunt does not believe that her brother abused the child and will not agree to follow the plan for only supervised visitation, and the tribe has indicated that it intends to place the child with her, this would not be a safe placement for the child.

The SW must support the tribe and the potential placement in increasing safety whenever possible. This may include Child and Family Team meetings, case mappings, training, the development of a support network, etc.

The final decision and responsibility is with the Juvenile Court for determining the appropriateness of an Indian child's placement.

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**Documentation**

Document all active efforts made to comply with the order of placement preference for Indian children in the CWS/CMS Contact Notebook and in the court report under the "Out of Home Placement" section.

Even when parental rights have been terminated, ICWA applies and requires compliance with placement preference. The removal of an Indian child from their families and placement in foster and adoptive homes will 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.

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## Social Worker and/or Designee Responsibilities/Ongoing/Initial Duties

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**Determination of  
Child's Indian  
Status**

Remember that CWS has an ongoing and affirmative duty to inquire into the child's Indian status. If inquiry was not completed prior to detention, or prior to transfer of the file to a new SW, the assigned SW must ensure that proper inquiry is completed. The SW must also ensure that such ongoing efforts are documented. See Inquiry section above.

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## Social Worker and/or Designee Responsibilities for Petition

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### Notification to the Tribe(s)

If the tribe is known, notify the tribe by telephone and give them the time and place of the Detention Hearing. If you do not know who the correct contact person is for the tribe, look up the tribe's designated ICWA agent in the list published most recently in the [Federal Register](#). Send notice by email and fax as well if the Federal Register list provides this information.

Best practice for non-local tribes is for the CWS SW to obtain a telephone number for the tribe/tribal representative so that they can be contacted during the Detention Hearing if they chose to participate via telephone.

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### Notification to the Parent(s)

Notify the parents/guardians/Indian custodians in-person or by telephone and give them the date, time, and place of the Detention Hearing.

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### Completion of Juvenile Dependency Petition

In the JV100 Juvenile Dependency Petition and JV101(A) Additional Children Attachment sections L and M, indicate if the child(ren) may be or is Native American by selecting the appropriate box for each child. If you have indicated the child is or may be Native American, document in the Detention Hearing Report all **active efforts** made to prevent the need for removal, all **ICWA inquiry** information, whether the tribe is federally recognized or non-federally recognized, and to whom and how **notice** was provided.

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### Completion of ICWA Forms/Recommendations

Along with the Detention Hearing paper work, the SW should have the parents/guardians/Indian custodians complete the ICWA-020 Parental Notification of Indian Status form. The SW must complete the ICWA-010(A) Indian Child Inquiry Attachment form and file both with the petition. If the ICWA-020 Parental Notification of Indian Status cannot be completed in time to file with the petition, file before or by the Jurisdictional hearing. When a parent claims membership or ancestry in a federally-recognized tribe, the parent should fill out the ICWA 030 form with the assistance of his or her attorney.

The SW will include a recommendation in the detention report that the court order requires the "Mother/Father/Parents/Guardians to disclose to the social worker, the names, residences, and any known identifying information of any maternal or paternal relatives of the child."

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## Social Worker and/or Designee Responsibilities for Jurisdiction

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### **After the Detention Hearing**

Immediately after the Detention Hearing, thoroughly complete the ICWA-030 "Notice of Child Custody Proceeding for Indian Child" with the information obtained from the parents/guardians/Indian custodians/extended family members, etc. 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, "Inquired but No Information Available" and "See Additional Information Below." Then, in the Additional Information box indicate who was interviewed and their relationship to the child. 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.

**Best practice:** SW should ask the parent or parent's attorney to complete and provide a draft ICWA -030 form and attach this to the report subsequently filed with the court. This will prevent the parent from alleging in a subsequent appeal that they were not asked about their Indian ancestry or that they provided information that was not included in the ICWA-030 notices sent by CWS.

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**Notice of Proceedings**

Formal ICWA notice is required if a thorough inquiry has resulted in information if there is a reason to know the child is or may be a member of a federally-recognized tribe or eligible for membership in such a tribe. If a thorough inquiry has not resulted in the identification of a specific federally-recognized tribe or tribes that the child is or may be a member of or eligible for membership in, formal ICWA notice is not required. The SW should consult with County Counsel if in doubt and also ensure that inquiry efforts and findings are thoroughly documented in the court report(s).

When notice is required, the ICWA-030 Notice of Child Custody Proceeding for Indian Child, copy of the petition, and a copy of the child's birth certificate (if available) will be mailed to the following parties:

**Bureau of Indian Affairs (BIA)**

Pacific Regional Director  
Federal Office Building  
2800 Cottage Way  
Sacramento, CA 95825

**Secretary of the Interior  
US Department of the Interior**

1849 "C" Street, N.W.  
Washington, D.C. 20240

**Parents/Guardians**

**Indian Custodian (if any)**

By Certified Mail with no restriction on delivery, an additional notice by first class mail is recommended, at least 15 days prior to the hearing (no hearing, except for the detention hearing, will be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the BIA).

Tribe(s) – addressed to the named tribal chairperson, unless the tribe has designated another agent for service. The named ICWA agent listed in the Federal Register must be used. Notice will 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.

CDSS attempts to keep a current roster of federally recognized tribes and their addresses on the CWS/CMS to facilitate noticing of tribes. However, CWS/CMS cannot be used as the sole contact list for purposes of sending the ICWA notices. It is mandatory that notice also be sent to the individuals on the list of designated agents for service developed by the BIA to ensure that legally sufficient notice is achieved.

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**Role of ICWA Specialist**

The CWS designated ICWA specialist will be responsible for mailing the ICWA-030 Notice of Child Custody Proceeding for Indian Child, Petition, and a copy of the child's birth certificate (if available), and copy of paternity findings (if available) to the address as described above. The notice must be sent by registered or certified mail, return receipt requested, with no restriction on delivery at least 15 days prior to the hearing. (ICWA prohibits any hearing from being held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the BIA. State law provides an exception for the detention hearing.) An additional notice by first class mail is recommended.

The ICWA specialist will complete the following steps to mail the notices:

Step	Action
1	Place a checkmark next to each address listed on the certified mail list for which a notice was mailed
2	Note at the bottom of the mail list that the notices were mailed, the date mailed and the name of the ICWA specialist who mailed the notices
3	Place the mail list in the mail slot of the SW to be filed in the case

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**No Response from Tribe or BIA to First Notice**

If no response is received from the Tribe and/or BIA that were noticed within 15 business days from the date of the first mailing, the assigned SW will initiate due diligence efforts by calling or faxing an inquiry to the tribe and requesting information regarding the child's Indian status be faxed to CWS.

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**CWS/CMS Documentation**

The assigned SW will document all due diligence active efforts to notice the tribe(s) in the Contact Notebook in CWS/CMS. Per WIC 224.2(i), the court shall treat the child as an Indian child unless and until the court determines on the record and after review if the report of due diligence that there is no reason to know whether the child is an Indian child, the court may make a finding that ICWA does not apply.

**NOTE:** If a tribe responds and the court already made a finding that ICWA does not apply, consult with County Counsel. County Counsel will advise the SW which report to file with the court. SW staff will need to include the response (from the Tribe) as an attachment. A response indicating that the child is an Indian child will require a reversal of the court's prior finding that ICWA does not apply.

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**Update Client Notebook**

Update new information received from the tribe(s) or the BIA and code the child as “eligible,” “member,” or “not eligible” in the Client Notebook – ICWA page of CWS/CMS by completing the following steps:

<b>Step</b>	<b>Action</b>
1	Click the Client Services Application.
2	Click the Open Existing Case Folder button.
3	Use the Open Folder dialog box to select the case you want to open.
4	Click OK.
5	Click Yes.
6	Click the Client Management (Blue) section.
7	Click the Open Existing Client Notebook.
8	Select the Client Notebook(s) you want to open.
9	Click OK.
10	Click the ICWA tab.
11	Update the ICWA page.
12	Select Save to Database.

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**Proof of Service**

File original proof of service with the court prior to the hearing by attaching all return receipts and provide copies of all documents filed with the court to CC and all attorneys of record.

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**Court Report**

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):

- Copies of the proof of service and returned receipts mailed to the tribe(s), BIA, Indian Custodian, Parents/Legal Guardians
  - Response letters received from the tribe(s) and BIA such as Letter of Confirmation
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## Continue to Notice

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### Notice of Child Custody Proceeding

Use the ICWA-030 Notice of Child Custody Proceeding for Indian Child to notice on Indian child custody proceedings, **until**:

- the tribe(s) acknowledge in writing that the child is not a member and is not eligible for membership and the court determines ICWA does not apply;
- a tribe determines the child is a member. From that point on the notices to the tribe are in the same format as all other parties receive.

**NOTE:** It is the responsibility of the SW to lodge proposed findings with the Court that ICWA does not apply.

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### Tribal Intervention

Once a tribe has affirmed a child is an Indian child or has intervened, subsequent notices do not need to include the ancestral information, a copy of the petition, a copy of the child's birth certificate, or the statement of rights.

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### Review Minute Orders

SWs should review each minute order verifying that the proper findings and orders were recorded. One or more of the following findings may be required for Indian cases:

- Notice has been provided to all required parties
- The child's Indian status and the child's tribal membership
- Whether ICWA applies or ICWA does not apply

**NOTE:** 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 in the CWS/CMS. This will take the child out of an ICWA pending status in CWS/CMS.

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**Review Minute Orders (cont.)**

For cases where it is determined that the child is an Indian child, the findings must include:

- at any disposition hearing, periodic pre-permanency review hearing, or any 366.26 hearing, a finding must be made by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family, and these efforts were unsuccessful.
- at disposition periodic pre-permanency review hearings where recommendation is for the child not to return home, clear and convincing evidence, including the testimony of a qualified expert witness who will consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child rearing practices, that continued custody by the parent(s) or Indian custodian is likely to cause the Indian child serious emotional or physical damage.
- at every status review, the court should determine whether the agency has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family WIC 366(a)(1)(B).
- at a 366.26 hearing, when the recommendation is termination of parental rights, there must be a finding beyond a reasonable doubt, including the testimony of qualified expert witness who will consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe (including that tribe's family organization and child rearing practices) that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- the statutory preference order for placement was followed or good cause exists to modify the placement order.

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**Invalidation**

If the ICWA notice is not proper, active efforts were not provided, or there was not a qualified ICWA expert witness, any Indian child, parent, Indian custodian, or the tribe may petition the court to invalidate the proceedings. If the minute order and the findings and orders indicate that the court heard the case without verification of the child's Indian status, or if questions remain, contact County Counsel to determine a course of action.

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## Additional Noticing Requirements

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### Essential Notice Information

Notices must include all of the following information:

- The name, birth date and birthplace of the child, if known
  - The name of the Tribe in which the child is a member, or may be eligible for membership, if known
  - All names and aliases known of the child's biological parents, grandparents, great-grandparents, Indian custodians including maiden, married and former names and aliases
  - The current and former addresses, birthdates, places of birth and death, tribal enrollment numbers and any other identifying information, if known
  - A copy of the petition by which the proceeding was initiated
  - A copy of the child's birth certificate, if available
  - The location, mailing address and telephone number of the court and all parties notified
  - Court Orders for paternity, if available
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## Qualified Expert Witness

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### **When testimony from a Qualified Expert Witness is Required**

ICWA requires the testimony of a qualified expert witness for any foster care placement or termination of parental rights. In practice, this means that a qualified expert witness is required for:

- the Disposition Hearing when recommending involuntary out of home placement, including 387 hearings if the child was previously placed with parent(s); and the 366.26 hearing when recommending termination of parental rights.

Since the law requires that a child be returned to the parent at a periodic pre-permanency review hearing (i.e., the 6-Month, 12-Month, or 18-Month Review Hearings) unless sufficient risk of detriment is established, it is arguable that a qualified expert witness is also required at such review hearings when recommending against return to parent. Best practice is to require a qualified expert witness and an ICWA detriment finding at such review hearings, particularly when:

- the ICWA detriment finding was not previously made at disposition because ICWA was not applied; or
- the ICWA detriment finding was made at the prior disposition hearing but it has become stale due to significant delays in the case or a significant change in circumstances.

The requirement can be easily satisfied by providing the previously-retained qualified expert witness with a copy of the review hearing report and asking them to provide an updated declaration affirming whether their prior opinion concerning the ICWA detriment standard has changed a result of the new information contained in the report.

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### **Qualified Expert Witness Content**

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. Additionally, the standards for the removal of an Indian child and the termination of parental rights for an Indian child require that the court consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and child rearing practices.

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### **Testimony, Declaration, or Affidavit**

Per WIC section 224.6 the court may accept a declaration or affidavit from a qualified expert Indian 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.

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**Qualifications of a  
Qualified Expert  
Witness**

A qualified expert witness may include, but is not limited to, tribal SW (a qualified expert witness **cannot** be a CWS employee), sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, tribal historian, or tribal elder. Persons with the following characteristics are most likely to meet the requirements for a qualified Indian expert witness for purposes of Indian child custody proceedings:

- A person designated by the Indian child's tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe
- A member or citizen 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
- 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

**Best Practice:** The SW should always contact the tribe or tribal representative first to find out who the tribe recommends to be their expert witness. (Cf § 224.6 (d).)

**NOTE:** If the SW cannot secure an expert witness, contact the PSS of the ISU.

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## Social Worker and/or Designee Responsibilities for Disposition

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### Document Active Efforts

When recommending that an Indian child remain in out of home care at the disposition hearing, document in the disposition court report how active efforts have been unsuccessful to keep the Indian family together.

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### Identifying a Qualified Expert Witness

To identify an expert witness, the SW will contact the tribal representative and determine if they have an identified person to act as an expert witness. If not, the SW will find an expert witness with the approval of the tribe.

**NOTE:** If the SW cannot secure an expert witness, contact the PSS of the ISU.

Click [here](#) for the Judicial Council of California/CDSS California ICWA Expert Witness List. This should only be used as a last resort.

**Best Practice:** If there are disagreements about who to use as the qualified expert witness, consider scheduling a case consultation among all involved parties. If the parties cannot agree on a single Qualified Expert Witness, there may be multiple Qualified Expert Witnesses in a trial.

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### Arranging for the Appearance of the Qualified Expert Witness

It is **best practice** for the case carrying SW to make the request to the expert witness at least 10 court days before the hearing providing all necessary court related documents so that they may be prepared.

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### Summarizing Recommendations of the Indian Expert Witness

If the expert witness provides a report or declaration the SW may summarize the recommendation in the disposition or other court report under the following sections “Relevant Social, Cultural and Physical Factors” and “Statements of Others.”

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### Attach Expert Witness Declaration or Affidavit

If the expert witness provides a report or declaration, the SW may submit the qualified expert witness’ report as an attachment to the court report. However, the CWS SW must make the qualified witness available for testimony and cross-examination at the hearing, unless the parties stipulate to receipt of a declaration or affidavit in lieu of live testimony.

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## Social Worker and/or Designee Responsibilities for Permanent Plan

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### Testimony from Expert Witness

At the Selection and Implementation Hearing (WIC 366.26) ICWA requires the testimony of a qualified expert witness when recommending termination of parental rights in an Indian child custody proceeding. See the section titled “Qualified Expert Witness” in this protocol.

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### Reasons for Not Terminating Parental Rights - Adoption Exception

The Court may find that there are compelling reasons for determining that termination of parental rights would not be in the best interest of an Indian child (see WIC 366.26, subd. (c)(1)(B)(vi)(I)-(III):

- 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.
- The Indian child’s tribe has elected to pursue Tribal Customary Adoption (TCA) as the permanent plan.
- The child’s tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child. Compelling reasons listed under WIC 366.26, subd. (c)(1) (A) and (B)(i)-(v) also apply to Indian children.

For Post Permanency Hearings including Tribal Customary Adoptions hearings where parental rights have not been terminated, notice is required to mothers and presumed fathers.

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### Prepare the Report

The SW preparing the WIC 366.26 report will:

- contact the expert witness and discuss the case. Provide the expert witness with case documents to make a recommendation regarding a permanent plan for the Indian child. The expert witness must consider evidence concerning the prevailing social and cultural standards of the Indian child’s tribe, including that tribe’s organization and child rearing practices.
- inform the expert witness of the court date for the WIC 366.26 hearing and that their testimony will be requested by the court.
- summarize the recommendation in the court report under “Analysis of the Likelihood of Adoption and Proposed Permanent Plan” if the expert witness’s final recommendation report is received.
- submit the expert witness report as an attachment to the court report.

If the prospective adoptive home is a non-Indian home, 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 and discuss if they agree to a Post-Adoption Contact Agreement. 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.

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## Tribal Customary Adoption

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### Policy

Tribal Customary Adoption (TCA) is an adoption which may occur for an Indian child who is a dependent of the California court, under the customs, laws, or traditions of an Indian Child's tribe. TCA requires the SW to address, in consultation with the child's tribe, whether TCA is an appropriate permanent plan for the child. Consultation requires an ongoing partnership and collaboration with the tribe.

The key differences between TCA and a conventional adoption are:

- TCA allows a dependent Indian child to be adopted utilizing the state court without Termination of Parental Rights (TPR). The current TPR procedures and corresponding forms and documents such as the AD 4333 are not required to finalize a TCA;
- the plan of TCA cannot be recommended, selected, facilitated or finalized without the consultation (involvement) of the Indian child's tribe. Only the tribe can select TCA as an option for the Indian child; and
- per Family Code section 8600.5, TCA is excluded from Part Two of the Family Code, "Adoption of Unmarried Minors." The primary procedures and standards applicable to TCA are contained in Welfare and Institutions Code (W&IC) section 366.24.

As part of concurrent planning, the SW should continue to inquire with the tribe and the child's caregiver about TCA as a permanent plan prior to:

- the initial Jurisdictional/Dispositional report;
- each status review court report; and
- the §366.26 assessment report.

TCA will not apply to:

- Private adoptions;
- Intercountry adoptions;
- A probation ward\*;
- "Spirit of ICWA" children; or
- A voluntary relinquishment to an agency by their parents.

TCA applies to Indian children who are eligible for membership in any federally recognized tribe (not just California).

**NOTE:** TCA can apply to dual status children.

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**CWS/CMS Data Entry**

The TCA Special Projects Code will be selected on the Special Project tab of a case in CWS/CMS to indicate a child is being considered for tribal customary adoption. Any case in which TCA is considered as a permanency option (regardless of whether or not TCA was actually selected as the permanency plan), must be identified with this TCA Special Projects Code in CWS/CMS. The Special Projects Code should be selected at the time TCA is considered. Once a case is identified with the TCA special projects code, the code should remain selected regardless of the case/permanency outcome. The Special Projects Code will assist in tracking cases for data collection.

In order to identify a case in which TCA has been considered, use the following steps in CWS/CMS:

Step	Action
1	In the Case Folder, go to “Special Projects” tab and then the (+) button in the grid to enter a new Special Project page for the focus child
2	Click the down (+) to display the available list of Special Projects
3	<b>Select the following code: “S-Tribal Customary Adoption”</b> The child is in out-of-home care, and reunification services have been ordered. The child has been determined to be ICWA eligible and tribal customary adoption is an option to be discussed with the tribe

The SW will record all contacts with the child’s tribe concerning TCA in the Contact Notebook/Delivered Services Log.

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**Consulting with the Child's Tribe**

The SW will:

1. consult with the child's tribe before initiating the adoption process via:
  - Verbal or written communication, e.g. telephone, regular or electronic mail or facsimile
  - In person meetings
  - CFT meetings
2. obtain all information that the **tribe deems relevant**, which could include but is not limited to, the following information:
  - Whether the tribe has a court or formal process for issuing TCA orders
  - Tribal customs including those regarding TCA's
  - Tribal Laws/Standards regarding TCA's
  - Traditions, including those regarding TCA's
  - Ceremonies/events
  - Geography
  - Significant history

When there is more than one tribe associated with the child, the SW is responsible for consulting with all tribes associated with the child to obtain information regarding the child's case until a separate primary tribe is identified by the court pursuant to W&IC § 224.1(d). Once the primary tribe is established, they become the Indian child's tribe responsible for recommending TCA as the permanency plan for the child.

**NOTE:** California State Adoption regulations require "a certificate, for each adult residing in the home, stating that the individual is free from communicable tuberculosis". Families that are going through the tribal customary adoption process will be required to provide certification of tuberculosis screening in order to finalize an adoption.

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**Tribe's Notification to Pursue TCA**

At any point in the **dependency case**, until a TPR is ordered, **the tribe may verbally inform the SW of their interest in pursuing TCA.**

If...	Then...
<p>CWS is informed of the tribe's interest to pursue TCA <b>prior to the dispositional hearing,</b></p>	<p>the SW is responsible for discussing the case with the tribe and obtaining any information needed to report to the court the appropriateness of TCA as a plan for the child if reunification is unsuccessful.</p>
<p>CWS is informed of the tribe's interest to pursue TCA prior to or during the <b>concurrent planning process</b> (at review hearings pursuant to W&amp;IC, §§ 361.5, 366.21, 366.22, or 366.25) 358.1(j)</p>	<p>the SW must consult with the child's tribe to obtain any relevant information to update the court regarding the likelihood the child will be adopted, and if TCA continues to be the appropriate permanent plan. If the tribe is interested in <b>designating an adoption agency to complete the TCA home study</b>, the tribe must provide authorization (written or verbal) to that agency designating them to conduct an assessment of the applicant.</p>
<p><b>reunification services are not offered or have been terminated</b> and the W&amp;IC 366.26 hearing is set, <b>and</b> CWS has not been designated to conduct the TCA home study,</p>	<p>the Indian child's tribe must provide written confirmation to CWS of their decision to pursue TCA for that child. This confirmation must include whether the tribe will conduct its own home study or procure a tribal designee. Once the confirmation is received, the SW is responsible for consulting with the child's tribe to obtain information to complete the written assessment of the child. The information obtained during this assessment is used to complete the .26 report.</p>

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**Application to Adopt**

The tribe's authorization, designating CWS to conduct an assessment of the applicant, will include:

- an indication that it is for the purposes of a tribal customary adoption; and
- the applicant's tribal membership, if applicable.

**NOTE:** The applicant does not have to be a tribal member or an American Indian.

CWS will have discretion to recommend in writing to the tribe approval or disapproval of the applicant. However, the tribe has the final authority to issue approval or disapproval. An applicant's assessment will not be approved by the tribe if the applicant or another adult residing in the home has a criminal record that cannot be cleared pursuant to the Adam Walsh Act.

When a designated agency recommends a denial of an adoptive applicant's TCA home study, regardless of the tribe's final decision, the adoptive applicant will retain the right to request a grievance review hearing as specified in Title 22, Division 2, CCR section § 35215.

When a tribe denies a TCA home study completed by a designated agency, the tribe may, in its discretion provide a grievance procedure similar to or above and beyond the one the agency must provide, but is not required.

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**TCA Adoption Home Study**

The completion of an adoptive home study can be completed by either the Indian child's tribe or tribe's designee. If the tribe completes the home study but does not have the capacity to complete its own background checks, then CWS will complete the criminal and child abuse registry background checks.

**NOTE:** The tribe's designee may include CWS, a licensed county adoption agency, CDSS when it is acting as an adoption agency, or a California licensed adoption agency. Tribal designees **do not include** agencies the tribe may use when the tribe conducts its own home study.

If CWS is appointed as the designee and completes the adoptive home study for the tribe, it must be conducted in consultation with the child's tribe. Consent from the individuals being evaluated must be obtained.

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**TCA Adoption Home Study (cont.)**

The home study will include:

- evaluation of the family's background;
- safety and health information of the adoptive home including biological, psychological and social factors of the prospective adoptive parent(s);
- an assessment of the commitment, capability and suitability of the prospective adoptive parent(s) to meet the child's needs;
- CACI clearance; and
- DOJ clearance.

An adoptive placement cannot be approved if any of the following apply to any adult residing in the home:

- A felony conviction for child abuse or neglect, spousal abuse, crimes against a child including child pornography
- A crime involving violence including rape, sexual assault or homicide but not including other physical assault and battery
- A felony conviction that occurred within the last five years for physical assault, battery or a drug related offense

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**Medical Information**

Similar to the conventional adoptive placement process found in Title 22, Division 2, CCR section 35195, pursuant to W&IC section 366.24(9) the following information is required to complete the tribal customary adoptive placement:

- A written report, using form **AD 512**, on the Indian child's medical, and if available, the medical background on the child's biological parents, given to the prospective tribal customary adoptive parents and an acknowledgement they have received it. The report on the Indian child's background must contain all known diagnostic information, including the following:
  - Current medical reports on the Indian child
  - Psychological evaluations
  - Scholastic information
  - Developmental history

This information is provided to the adoptive family during the Adoptive Telling.

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**TCA Placement**

CWS will supervise the tribal customary adoptive placement for 6 months unless the child to be adopted is:

- a foster child of the prospective adoptive parents whose foster care placement has been supervised by an agency before signing the adoptive placement agreement, in which case the supervisory period may be shortened by one month for each full month that the child has been in foster care with the family; **or**
- placed with a relative with whom the child has an established relationship.

The completion of a tribal customary adoption home study assessment is contingent upon whether:

- the SW has consulted with the tribe and the tribe provides a written document it is in agreement;
- the SW has provided a written recommendation to approve or disapprove the applicant ;
- the applicant's criminal record has been cleared pursuant to WIC 366.24(c)(5) (the Adam Walsh Act); and
- completion of the TCA adoption home study.

Once the Juvenile Court affords full faith and credit to the Tribal Customary Adoption Order (TCAO), the child will be eligible for tribal customary adoptive placement.

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**366.26 Hearing Report**

In addition to what is already included in the 366.26 assessment written by the Adoption SW, the SW will also include under Permanency Planning Assessment section:

- identification of the child's tribal membership or tribal affiliation;
  - all siblings and their tribal membership or tribal affiliation if applicable;
  - whether the child would benefit from continuing contact with members of his or her extended family including family defined consistent with the child's tribal culture after an adoption;
  - religion and cultural background will include the child's tribe's prevailing social and cultural norm;
  - the preference of the parents and the child unless the child's age or physical, emotional or other condition precludes his/her meaningful response;
  - the SW's review of the child's behavior that may be concerning to the SW or tribe and whether it was determined that the child would benefit from further evaluation by and through a culturally appropriate agency or professional; and
  - the terms of the proposed tribal customary adoption.
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**Tribal Customary Adoption Order (TCAO)**

The following table identifies the actions needed at each hearing:

Hearing	Action
<p>Prior to the .26 hearing</p>	<p>The TCAO is completed by the child’s tribe and will include:</p> <ul style="list-style-type: none"> <li>• a description of the modification of the legal relationship of the birth parents or Indian custodian and the child, including contact if any between the child and the birth parents or Indian custodian;</li> <li>• responsibilities of the birth parents or Indian custodian;</li> <li>• the rights of inheritance of the child;</li> <li>• the child’s legal relationship with the tribe;</li> <li>• tribe’s role and responsibilities; and</li> <li>• adoptive parent’s role and responsibilities in the TCAO.</li> </ul> <p>Other orders that may be included in the TCAO may include:</p> <ul style="list-style-type: none"> <li>• name changes for the child;</li> <li>• changes to the child’s birth certificate; and</li> <li>• tribe’s role and responsibilities.</li> </ul> <p>The order will not include:</p> <ul style="list-style-type: none"> <li>• any child support obligation from the birth parents or Indian custodian.</li> </ul> <p>The TCAO will be filed with the Juvenile Court by the tribe, 20 or more days before the 366.26 hearing. The TCAO must be completed within 120 days of the original 366.26 hearing with the court having the option to grant a continuance of up to 60 additional days.</p>

**Tribal Customary Adoption Order (TCAO) (cont.)**

Hearing	Action
At the .26 hearing	If the tribe fails to file its TCAO by the 366.26 hearing the court may: <ul style="list-style-type: none"><li>• proceed to determine the best permanent plan for the child. The court may terminate parental rights for an adoptable child when it is not detrimental to the child to do so.</li><li>• identify TCA as the permanent placement goal and continue the hearing.</li></ul> If the tribe timely files the TCAO before the 366.26 hearing the court may: <ul style="list-style-type: none"><li>• order a TCAO without terminating parental rights upon giving full faith and credit to the TCAO.</li><li>• order TCA be considered as well as guardianship or APPLA if terminating parental rights is not in the best interest of the child.</li></ul>
After the .26 hearing	Once the adoption order is granted by Juvenile Court, dependency is terminated.

**TCAO Set Aside**

A TCA can be set aside for up to five years (W&I Code 366.23(e)(3) following the TCAO if the child shows evidence of a developmental disability or mental illness and if that disability or illness would have considered the child as non-adoptable and if the tribal customary adoptive parent was not informed of such information prior to the adoption.

Click [here](#), for additional information regarding TCA.

## Contacts

### Southern Indian Health Council

Represents an ICWA Consortium of the following East San Diego County Tribes: Barona Band of Diegueño Mission Indians, Campo Band of Diegueño Mission Indians, Ewiiapaayp Band of Kumeyaay Indians, Jamul Indian Village, La Posta Band of Diegueño Mission Indians, Sycuan Band of Kumeyaay Nation, Viejas Band of Diegueño Mission Indians

#### Alpine Clinic

	Phone	Fax
Main Office	(619) 445-1188 press 1	N/A
Medical	ext. 400	(619) 659-3141
Dental	ext. 440	(619) 659-3135
Kumeyaay Family Services	ext. 200	(619) 659-9782
Indian Child Social Services	ext. 260	(619) 659-3144
Pharmacy	ext. 430	(619) 445-2892

#### Campo Clinic

	Phone	Fax
Main Office	(619) 445-1188 press 2 or Ext. 700	N/A
Medical	ext. 700	(619) 478-2288
Dental	ext. 740	(619) 478-2288
Pharmacy	ext. 730	(619) 478-2323

#### La Posta Substance Abuse Center

Phone: (619) 445-1188 press 3 or ext. 770

Fax: (619) 478-2844

<b>Indian Health Council</b>	<p>Represents an ICWA Consortium of the following North San Diego County Tribes:          Inaja-Cosmit Band of Diegueño Mission Indians, La Jolla Band of Luiseño Indians, Los Coyotes Band of Cahuilla &amp; Cupeño Indians, Mesa Grande Band of Diegueño Mission Indians, Pauma Band of Luiseño Mission Indians, Rincon Band of Luiseño Mission Indians, San Pasqual Band of Diegueño Mission Indians.</p> <p><b>Rincon Clinic</b>          Main Office – (760) 749-1410 ICWA and Tribal Social Services – ext. 7          Fax: (760) 749-5518          Karan Kolb, Director of Social Services – ext. 5324</p> <p><b>Santa Ysabel Clinic</b>          (760) 765-4203</p>
<b>Pala Band of Mission Indians</b>	<p>Season Goodpasture, Director of Social Services          (760) 742-8920</p>
<b>Iipay Nation of Santa Ysabel Social Services</b>	<p>Linda Ruis, Director of Social Services          (760) 765-1093 ext. 204</p>
<b>Sycuan Band of the Kumeyaay Nation Health Clinic</b>	<p>Medical and Dental Services          (619) 445-0707</p> <p>ICWA Matters          Brianna Sandoval          Councilwoman          (619) 445-2613 ext. 1006</p>
<b>Soboba Band of Luiseño Indians</b>	<p>Alicia Golchuck, Director          Tribal Family Services          (951) 487-0283</p> <p>Tribal Administration          (951) 654-5544          (951) 654-2765</p>
<b>San Diego American Indian Health Center</b>	<p>Provides medical, dental and social services          (619) 234-2158</p>
<b>Pechanga Band of Luiseño Mission Indians Social Services</b>	<p>Esmeralda Lomeli, Director Child and Family Services          (951) 770-6105</p>
<b>Manzanita Band of Diegueño Mission Indians Social Services</b>	<p>Angela Elliott Santos, Chairwoman          (619) 766-4930</p>

**Academy for  
Professional  
Excellence Tribal  
STAR**

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