

ICWA INQUIRY AND NOTIFICATION

“If an Indian child is not known to be American Indian/Alaskan Native (AI/AN), how can social workers and service providers ensure culturally effective services and case plans?”

*- Judicial Council of California,
Social Work Practice Tips for Inquiry and Notification*

All Indian children deserve a strong, protective circle of caring adults to ensure they are loved, safe, and connected to their community, tribe and culture. The Indian Child Welfare Act (ICWA) of 1978 is a federal law that recognizes how important those connections are while also ensuring the continued existence of tribal nations as unique, distinct, and sovereign.

ICWA was passed into law in response to the alarmingly high number of American Indian and Alaska Native children being removed from their families and placed outside of their communities. ICWA requires states and courts to protect the best interest of Indian children by establishing a higher standard of evidence for removal and by maintaining and strengthening their connection to family, community, culture, and tribal nation.

ICWA is considered the “gold standard” in child welfare policy and practice and requires state child welfare agencies and courts to:

1. Provide active efforts to both prevent removal from and to reunify children with their families
2. Follow preferred placement preferences
3. Obtain testimony of a qualified expert witness (QEW) at the removal hearing and in the event of a termination of parental rights

In 2016 the Bureau of Indian Affairs issued both official regulations and accompanying guidelines to help state courts and child welfare agencies implement ICWA; these regulations and guidelines provide clarification on important aspects of the law including standards of practice with families.

ICWA: LAW & REGULATIONS

[The Indian Child Welfare Act \(25 U.S.C. §§ 1901–1963\)](#)

[BIA Federal Regulations \(25 C.F.R. Part 23, Indian Child Welfare Act Proceedings, Final Rule\)](#)

[BIA Guidelines for Implementing the Indian Child Welfare Act](#)

Find more ICWA resources on the [Tribal Information Exchange](#).



INQUIRY AND NOTIFICATION PROCESS

While the responsibility for inquiry and notification lies entirely with state and county child welfare agencies, this document will highlight what tribes can do within their own practice to support states' and counties' efforts at effective implementation of and full compliance with ICWA. The recent [ICWA Baseline Measures Project Findings Report](#) found that "a tribal representative being present early and often in the case was related to timely permanency," underscoring the importance of these initial steps of inquiry and notification.

Inquiry by state and county child welfare agencies into whether a child entering the system has Native lineage is essential to ensuring compliance with ICWA. ICWA defines an "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe" ([25 U.S.C. § 1912](#)).

It's impossible to know whether a child has Native lineage without inquiring from parents, extended family members, custodians, and service providers. Inquiry begins at intake but should be a continuous process until the tribe confirms a child's enrollment or eligibility for enrollment and the court makes a determination that ICWA applies to the case. When a state or county child welfare agency begins working with a family, and throughout the case, child welfare workers should ask all persons connected to the child about the possibility of the child having Native lineage. Child welfare workers should document all inquiry efforts in the case file.

ICWA should be applied if there is any "reason to know" the child may have Native lineage. The 2016 BIA ICWA regulations outline pretrial requirements for how a court should determine if there is "reason to know" ([25 C.F.R. § 23.107\(b\)](#)).

Notification to tribes is required for all involuntary child custody proceedings involving a Native child. The 2016 BIA ICWA regulations ([25 C.F.R. § 23.111](#)) detail the notice requirements and information that must be included, as well as the process to follow when sending the notification. This process includes sending notice via registered mail (or certified mail with return receipt requested) to each tribe where the child may be a member or eligible for membership, to the child's parents, and, if applicable, to the child's custodian. Copies must also be sent to the appropriate BIA Regional Directors (25 C.F.R. § 23.11(b)(1-12)). If there is "reason to know" but a specific tribe connected to the child is not identified, notice must then be sent to the appropriate BIA Regional Director (25 C.F.R. § 23.111(e)).

"The regulations implementing the Indian Child Welfare Act provide that Indian Tribes **may designate an agent other than the Tribal chairman for service of notice of proceedings under the Act.**"

- [Federal Register, Vol. 86, No. 189, October 4, 2021](#)

Given these requirements, if the state or county child welfare worker has reason to believe the child may have Native lineage, they need to verify this lineage with the named tribe(s) by sending notice to the designated tribal service agent(s) for ICWA. The state or county child

welfare agency's initial inquiry efforts and notification enable the tribe to investigate the child's Native lineage. The receipt by the tribe of the state or county agency's notification marks the start of the tribe's process to determine whether the child is enrolled or eligible for enrollment and allows identification of any tribal resources that may be available to the child and the child's family.

The BIA regularly publishes designated tribal agents' names and addresses in the Federal Register. [View the ICWA Designated Tribal Agents for Service of Notice \(10/04/2021\)](#), and be sure to check the [Federal Register](#) for updates to this list.

Tribal Best Practices in Receiving and Responding to ICWA Notifications

Receipt of notification from a state or county child welfare agency provides the tribe the opportunity to defend their rights under ICWA, determine any tribal resources available to the family, and protect the best interests of the tribal child. As the Native American Rights Fund makes clear in their [ICWA Guide Online](#), "Notice also ensures that the tribe will be afforded the opportunity to assert its rights under the Act irrespective of the position of the parents, Indian custodian or state agencies...Without notice, these important rights granted by the Act would be meaningless."

The 2016 BIA ICWA regulations requires each federally recognized tribe to identify an ICWA designated tribal agent for service, or receipt, of notice. The return receipt generated through certified or registered mail provides the sender, (i.e., the state or county child welfare agency), with evidence of delivery of the notice to the tribe. It is worth clarifying that a tribe has no obligation to respond to a state or county child welfare agency if the notification received does not pertain to their tribe or the eligibility for membership or enrollment of a child within their tribe. Additionally, it is important for the state or county child welfare agency to provide the tribe with sufficient information to make eligibility determinations or confirm membership.

BEST PRACTICE SUGGESTION

Regularly review your tribe's ICWA designated agent in the Federal Register to ensure the contact information is up to date. The list is updated quarterly, so it's worth checking throughout the year.

Reach out to the [BIA](#) with any necessary updates.

Considerations for Handling ICWA Notifications

The following considerations assume a notification received by a tribe pertains to a child who is connected to the tribe through enrollment or eligibility for enrollment. These considerations for tribes can assist in the development or refinement of an efficient case management process.

- Prior to sending the formal notification letter, did the state or county child welfare agency reach out to your tribe via email or phone to inquire about the child’s heritage, identify whether the child is enrolled or eligible for enrollment in your tribe, ask about any tribal services available to the child and family (especially those that could prevent removal or non-kinship placement), or make any other active efforts to prevent placement or reunify the family?
 - Does your tribe have a process for a timely response to these informal initial inquiries?
- Who is the tribe’s designated agent to receive ICWA notifications?
 - Who is responsible for updating this information with the BIA?
- After your tribe determines a child’s membership or eligibility for membership, what is your process for responding to the state or county child welfare agency?
 - Is your tribe’s response typically done in a timely manner? If not, how can your response happen more quickly and be done more efficiently? If workloads slow your response, can other staff in your program or tribe share responsibility for responding to notifications, or can you shift other responsibilities to improve timely response? If your process is cumbersome or has too many steps, how could it be streamlined?
- An ICWA notification must include a copy of the relevant child custody proceeding documents or petition, and the date, time, and location of any scheduled hearing. If any of this information is missing, document this oversight, and share it with your tribal attorney or other avenues in your jurisdiction for reporting noncompliance.
- A child welfare hearing cannot be set sooner than 10 days following a tribe’s receipt of notice. As stated by the [BIA](#), “The court will check to ensure there is proof that the notice was given and will not hold a foster-care-placement or TPR proceeding until at least 10 days after receipt of the notice of that particular proceeding (with extensions allowed at option of parent or Tribe). The Indian child’s Tribe has the right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.”
 - What is your tribe’s process for requesting this additional time, if necessary?

RESOURCES FOR UNDERSTANDING ICWA INQUIRY AND NOTIFICATION

It is important for tribal child welfare agencies and other professionals to understand both their tribe's and the state's rights and responsibilities under ICWA. This knowledge allows states and tribes to work in partnership and holds state or county child welfare agencies and other professionals accountable for full compliance with ICWA and effective implementation of the Act's provisions.

BEST PRACTICE SUGGESTION

Include a "Response to ICWA Notifications" section in your policies and procedures to ensure consistent practice. Consider including the following information in the "Response to ICWA Notifications" section:

- The name and tribal department of the tribe's ICWA designated agent for notifications
- How the tribal child welfare program receives ICWA notifications from the ICWA designated tribal agent (if the agent is not a staff member in the tribal child welfare program)
- How tribal child welfare workers should respond to informal inquiries received from states or counties
- The process for documenting any noncompliance (e.g., tribe did not receive necessary documents from the state or county child welfare agency or documents were not received in a timely manner)
- Individual to whom noncompliance should be reported and the manner and time frame for that reporting

[Bureau of Indian Affairs ICWA Quick Reference Sheet for Tribes](#)

This two-page guide from BIA provides highlights parts of the statute.

[ICWA Notice](#)

This BIA webpage identifies when a notice is required, what information should be included, and where the notice should be sent. It also offers a helpful directory for finding contact information for the BIA Regional Directors.

[Guidelines for Implementing the Indian Child Welfare Act](#)

This detailed guide from BIA provides more information around the requirements related to inquiry and notification.

