

ICWA Inquiry & Notice Quicksheet



Capacity Building
CENTER FOR COURTS

INQUIRY:

- (1) **Inquire in Every Case:** In **every case**, the child welfare worker or social worker, probation officer, petitioner and the court **must inquire** if the child is Indian.
- (2) **Inquire Early:** The inquiry about whether an Indian child is involved should be made at intake of a report of abuse or neglect or as soon as possible.
- (3) **Make an Affirmative Allegation:** In every action that meets the ICWA definition of a “**child custody proceeding**,” the court should **ensure that the petitioner has made an affirmative allegation that the child is, may be, or is not an Indian child**. Where information received in court raises the prospect that the child may be an Indian child, ensure that complete and accurate **notice is immediately provided** to the parent, the Indian custodian, the child’s tribe (if known), any tribe with which the child may be affiliated, and the BIA.

NOTICE:

- (1) **The Minimum Required:** At a minimum, 1912(a) of the Indian Child Welfare Act (ICWA) **requires notice in any involuntary proceeding** in a State court where the court **knows or has reason to know** that an Indian child is involved and the foster care placement of the child, or the termination of parental rights to the child is sought.
- (2) **Not Sure? Send Notice:**
 - a. Notice must be given **even if doubts remain whether the child is an Indian child** – often only with input of an Indian tribe will a state court be able to determine whether a child is Indian under the act. Failure to give notice cannot be justified by a later determination that the child in question is not Indian.
 - b. If you **cannot determine the child’s tribe** send the notice to all the tribes with which the child may be affiliated and the Secretary of the Interior through the Bureau of Indian Affairs (BIA).

(3) Recipients: The party seeking the foster care placement of or termination of parental rights to, an Indian child shall notify by registered mail, return receipt requested:

- The parent(s) or Indian Custodian **AND**
- The Indian child's tribe or tribes if more than one is identified (notice is sent to the tribe's designated agents)

About

- The pending proceedings **AND**
- The right to intervene

(4) Each Tribe: Notice must be given to each tribe in which the child is a member or is eligible for membership.

(5) Failure to Provide Notice: Failure to provide proper notice is **grounds for invalidating** the court's action. 25 U.S.C. § 1914.

(6) Notice Requirements: The BIA regulations require that notice must be provided by the party seeking placement or termination of parental rights to the parent(s), Indian custodian, and child's tribe by either **registered or certified mail, return receipt requested**, in involuntary proceedings.

- a. Copies of the notices must be provided to the regional director in each corresponding BIA regional office where the proceedings are taking place and the BIA will provide assistance in locating the Indian child's parents and tribe.
- b. This provision allows parties to request that the BIA make a "reasonable" effort to locate and notify the Indian child's tribe and parent or Indian custodian. (Click [here](#) to read more.)