

April 28, 2025

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

**EXECUTIVE SUMMARY**

**ALL COUNTY LETTER NO. 25-30**

The purpose of this All County Letter (ACL) is to engage, support, and assist county child welfare services and probation departments with implementation of the Indian Child Welfare Act ([25 United States Code § 1901 et seq.](#)) and amendments to Welfare and Institutions Code related to [Assembly Bill 3176](#) ([Chapter 833, Statutes of 2018](#)) requirements. This ACL is the fifth in a series devoted to this topic and will focus on Qualified Expert Witnesses.



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GAVIN NEWSOM  
GOVERNOR

April 28, 2025

ALL COUNTY LETTER NO. 25-30

TO: ALL COUNTY CHILD WELFARE DIRECTORS  
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS  
ALL CHIEF PROBATION OFFICERS  
ALL COUNTY ER PROGRAM MANAGERS

SUBJECT: INDIAN CHILD WELFARE ACT QUALIFIED EXPERT WITNESS  
REQUIREMENTS

REFERENCE: [ASSEMBLY BILL \(AB\) 3176 \(CHAPTER 833, STATUTES OF 2018\)](#);  
[AB 2944 \(CHAPTER 104, STATUTES OF 2020\)](#);  
[AB 81 \(CHAPTER 656, STATUTES OF 2024\)](#);  
[SENATE BILL 678 \(CHAPTER 838, STATUTES OF 2006\)](#);  
[ALL-COUNTY INFORMATION NOTICE I-40-10](#);  
[ALL COUNTY LETTER NO. 20-38](#);  
[TITLE 25 UNITED STATES CODE CHAPTER 21 1901 ET SEQ.](#);  
[WELFARE AND INSTITUTIONS CODE \(WIC\) 224.6](#); [WIC 290.1](#);  
[WIC 358.1](#); [WIC 319](#); [WIC 361](#); [WIC 352](#); [WIC 361](#); [WIC 361.7](#);  
[WIC 366.24](#); [WIC 366.26](#);  
[MANUAL OF POLICIES AND PROCEDURES DIVISION 31](#)  
[REGULATIONS](#);  
[ICWA INFORMATION SHEET: Q&A REGARDING ICWA \(QEW\)](#)

The purpose of this All County Letter (ACL) is to engage, support, and assist county child welfare services (CWS) and county probation departments with the Indian Child Welfare Act (ICWA) implementation, by providing an overview of amendments to the Welfare Institution Code (WIC) related to the ICWA ([25 USC § 1901 et seq.](#)) and [Assembly Bill \(AB\) 3176 \(Chapter 833, Statutes of 2018\)](#). This ACL is the fifth in a series devoted to this topic and will focus on qualified expert witnesses (QEWs).

## BACKGROUND

The ICWA was enacted in 1978 to prevent the breakup of Indian families and to protect the best interests of Indian Children, their families, and Tribes. However, the implementation and interpretation of the ICWA has been inconsistent across States and that State agencies and courts had often “failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families” ([25 CFR USC §](#)

[1901\(5\)](#)). As a result, the Bureau of Indian Affairs (BIA) promulgated regulations to address the need for consistent interpretation and implementation of the uniform minimum Federal standards the ICWA provides to ensure that all Indian Children and their families receive the same rights and protections across all States. The ICWA standards apply in emergency, voluntary and involuntary state court proceedings including dependency, delinquency, probate guardianship, and family court proceedings involving Indian Children. In 2006, California adopted the ICWA into state law, "CAL-ICWA" ([Senate Bill 678 \(Chapter 838, Statutes of 2006\)](#)), effective January 1, 2007. California has since incorporated and expanded upon the minimum federal standards adopted and clarified by the BIA in 2016 into statute with the passage of [AB 3176 \(Chapter 833, Statutes of 2018\)](#), effective January 1, 2019, [AB 2944 \(Chapter 104, Statutes of 2020\)](#), effective January 1, 2021, and [AB 81 \(Chapter 656, Statutes of 2024\)](#), effective September 27, 2024. Thus, California statute dictates that county CWS agencies and probation departments have a responsibility to understand and meet the ICWA standards to ensure the safety of Indian Children in California and help ensure that Indian Children remain safely in, or return to, their homes whenever possible.

The California Department of Social Services (CDSS) is releasing a series of ACLs as a follow-up to [ACL No. 20-38](#), which indicated the CDSS would release further policy and best practice guidance to provide additional support for implementing the amendments to the California WIC provisions made to conform state law with the 2016 amendments to the BIA regulations. The series of ACLs provide additional details and guidance to expand upon the policies outlined in [ACL No. 20-38](#), which include:

- Inquiry/Further Inquiry/Reason to Believe/Reason to Know/Notice ([ACL No. 23-46](#))
- Emergency Removals/Emergency Placement/Placement Preferences ([ACL No. 23-64](#))
- Active Efforts ([ACL No. 24-18](#))
- Voluntary/Involuntary Proceedings ([ACL No. 25-03](#))
- Qualified Expert Witnesses
- Jurisdiction – To be addressed in future ACL.

This ACL will be focused on QEWs.

## **PURPOSE OF A QUALIFIED EXPERT WITNESS**

The role of the qualified expert witness was included in the ICWA to address Congress' findings that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies" and that States "have often failed to recognize the cultural and social standards prevailing in Indian communities and families" ([25 USC § 1901\(4\) and \(5\)](#)). Testimony by an expert witness, who must be qualified to address both the likelihood of serious emotional or physical damage to the Indian Child from remaining in the home and the cultural and social standards of the child's Tribe, provides the information necessary for the court to make the decision whether to remove an Indian Child from their family or terminate parental rights. The requirement that the QEW be independent of the person or agency recommending removal or termination in the ICWA proceedings ensures that the testimony is presented by a neutral expert with the appropriate background. All of this serves to prevent Indian Children from being removed from their families based on biases about the Tribe's child-rearing standards.

## IDENTIFYING A QUALIFIED EXPERT WITNESS

The court cannot remove an Indian Child from the physical custody of their parents or Indian custodian, or make an order for involuntary foster care placement of an Indian Child, unless the court can make a finding by clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, informed by the testimony of a Qualified Expert Witness ([WIC §§ 361\(c\)\(6\)](#) and [361.7\(c\)](#)). A juvenile court may not terminate parental right without a determination supported by evidence beyond a reasonable doubt, including testimony of one or more qualified expert witnesses, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child ([WIC § 366.26\(c\)\(2\)\(B\)\(ii\)](#)). As defined in the Child Welfare Services ([MPP](#)) [section 31-002\(q\)\(1\)](#), a QEW is a person required to testify in an Indian Child-custody proceeding on whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. A QEW should have one of the characteristics described in the [MPP section 31-135.421](#). The testimony of a QEW is required whenever the court considers removing an Indian Child from the custody of their parent, guardian, or Indian custodian or when considering termination of parental rights. The ICWA requires the party that is requesting the removal to use and employ a QEW in specific ways outlined in [WIC § 224.6](#). In addition to these requirements, many times the QEW is also utilized for their expertise on active efforts, placement preferences, and other aspects of the ICWA.

The Indian Child, the Tribe, and the parent or Indian custodian from whose custody an Indian Child was removed can seek to invalidate the foster care or termination of parental rights action, if a QEW was not employed as the ICWA requires ([25 USC § 1914](#)).

A QEW must be able to testify as to whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and as to the prevailing social and cultural standards of the Indian Child's Tribe ([WIC §§ 224.6\(b\)](#), [361\(c\)\(6\)](#), and [361.7\(c\)](#); [MPP § 31-135.122](#)). A QEW's declaration or affidavit may be used in lieu of testimony only if it is stipulated in writing by the parties, and the court agrees that the stipulation was made with their full knowledge and understanding ([WIC § 224.6\(e\)](#)). Although the County may have a contract in place for a QEW, statute and best practice indicate the agency should work with the Indian Child's Tribe to secure the Tribe's designated QEW ([WIC § 224.6 \(a\)](#)). The QEW must be able to testify to the prevailing social and cultural standards of the Indian Child's Tribe, which is why it is strongly encouraged to use the expert designated by the Tribe. The party requesting the order for foster care placement or termination of parental rights is ultimately responsible for securing an appropriate QEW. It is not considered exceptional circumstances warranting a continuance simply because the opinion of the QEW is not completed by the time of the hearing ([WIC § 352\(b\)](#)).

Tribes are the experts on their own culture, cultural practices, and cultural standards. Best practice is for counties to collaborate with the Indian Child's Tribe when securing a QEW; however, the Tribe is under no obligation to supply a QEW, nor is the Tribe required to designate a QEW or pay for a QEW it designates ([ACIN No. I-40-10](#)). The QEWs should be paid and reimbursed as any other expert witness would be, and counties should develop a standard procedure for payment of individuals who serve as QEWs in cases involving Indian Children. The QEW could be the one designated by the party requesting removal, while also

allowing other parties, including the Tribe, to secure their own separate QEW. The Judicial Branch of California Courts also maintains a list of QEWs, but advises, "The Judicial Council does not endorse or guarantee any of the individuals included on the ICWA expert witness list. The contact information below is provided merely as a resource for those seeking an expert witness in an ICWA proceeding. The agency or individual seeking to use anyone on this list has the responsibility to screen that person for appropriateness for the agency or individual's purpose" ([California ICWA Expert Witness List](#)).

Counties are encouraged to be proactive when obtaining a QEW. The county should contact the child's Tribe, and if having difficulty connecting with the Tribe, contact the CDSS Office of Tribal Affairs at [TribalAffairs@dss.ca.gov](mailto:TribalAffairs@dss.ca.gov) to determine if a QEW is readily available.

Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of Indian Child custody proceedings ([WIC § 224.6\(c\)](#); [MPP §§ 31-135.421\(a-c\)](#)):

- 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.
- An 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.

A QEW should have knowledge of the Indian Child's Tribe, including but not limited to:

- The Tribe's family organization
- Extended family member definitions and structure
- Tribally approved homes and placement preferences
- Tribal safety assessments
- Tribal child-rearing practices.

A QEW serves as a culturally appropriate and independent reviewer of the child welfare agency's decision to recommend removal or termination of parental rights. Therefore, a QEW may not be an employee of the agency recommending foster care placement or termination of parental rights, i.e., a county child welfare or probation officer ([WIC § 224.6\(a\)](#)). While such employees may have the necessary knowledge or qualifications, they must not be utilized, due to a possible conflict of interest. A tribal social worker or representatives may serve as a QEW, if they are designated by the Tribe to do so. Utilizing a QEW in a case involving an Indian Child increases the likelihood that culturally informed findings and orders are made that prioritize the child's well-being, preserve their cultural identity, and prevent further trauma or the use of culturally insensitive interventions.

## **WORKING WITH A QUALIFIED EXPERT WITNESS**

As QEWs are required to provide independent, culturally informed testimony to the court, the court and the county agency should anticipate that the QEW will need access to relevant case records and interested persons well in advance of preparing their declaration. It is best practice that the QEW be provided with “(1) the petition, (2) all agency reports and attachments, (3) delivered service logs, and (4) findings and orders”<sup>1</sup> as authorized by law. The county should also provide contact information for the tribal representative(s), parent(s), Indian custodian(s), caregiver(s), and the Indian Child(ren) if they are old enough to be interviewed. The requirement for a QEW is not a mere formality. Compliance with this ICWA standard will likely reduce biased decision-making, thereby reducing disproportional representation of Indian Children in foster care and those who are freed for adoption. If a QEW concludes something different than what the county is recommending, it would be best practice for counties to consider, upon consultation with their counsel, whether to reassess its recommendation and engage in further discussions with the QEW and tribal representative(s).

If you have any questions or need additional guidance regarding the information in this letter, contact the Safety and Early Intervention Bureau at (916) 651-6160 or at [childprotection@dss.ca.gov](mailto:childprotection@dss.ca.gov).

Sincerely,

### ***Original Document Signed By***

ANGIE SCHWARTZ  
Deputy Director  
Children and Families Services Division

cc: All Federally Recognized Tribes

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<sup>1</sup> [ICWA Information Sheet: Q&A Regarding ICWA Qualified Expert Witnesses \(QEW\)](#)