



Children's Law Center of California

“DEPENDENCY LEGAL NEWS”

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NEW DEPENDENCY CASE LAW

ICWA—WIC 224.2

In re Ja.O.—published 8/4/25; California Supreme Court

Docket No. S280572; 18 Cal.5th 271

Link to case: <https://www4.courts.ca.gov/opinions/documents/S280572.PDF>

AS APPLIED TO ICWA CASES BEFORE THE PASSAGE OF ASSEMBLY BILL 81, THE AGENCY HAS A DUTY OF INITIAL INQUIRY TO ASK EXTENDED FAMILY MEMBERS ABOUT INDIAN ANCESTRY IN ALL CASES WHERE A CHILD IS TAKEN INTO TEMPORARY PROTECTIVE CUSTODY, IRRESPECTIVE OF WHETHER A WARRANT WAS OBTAINED OR NOT.

The agency obtained a protective custody warrant and took mother's five children into temporary custody pursuant to section 340 of the Welfare and Institutions Code. At the detention hearing, mother denied Indian ancestry, but father indicated in his ICWA-020 form that someone in his family was a member of a federally recognized tribe. The agency did not contact any extended members of the parents regarding potential membership in an Indian tribe. At a contested Disposition hearing, the juvenile court removed the children from parents and found ICWA did not apply. Mother appealed. The Court of Appeal affirmed, finding that a duty of initial inquiry only arose

when a child was placed into temporary custody without a warrant pursuant to section 306, and mother's children were placed into temporary custody pursuant to a protective custody warrant. Mother filed a petition for review, which was granted to resolve the split in authority concerning the agency's duty of initial inquiry.

Reversed. After review was granted, the Legislature passed Assembly Bill 81, which amended section 224.2 of the Welfare and Institutions Code to state that the agency has an initial duty of inquiry regarding Indian ancestry for all extended relatives regardless of whether a child was taken into temporary custody without a warrant pursuant to section 306, or after obtaining a protective custody warrant pursuant to section 340. In order to determine whether the Legislature intended for this amendment to apply retroactively to all prior cases before the amendment passed or only prospectively, courts apply rules of statutory interpretation. In this case, because there is no conclusive interpretation of the plain language of section 224.2, extrinsic sources such as legislative materials and public policy considerations can be considered. All of these extrinsic sources support reading section 224.2 broadly in order to ensure that cultural connections between the tribes and children of Native American ancestry are preserved and tribes have a meaningful opportunity to participate in court proceedings. Moreover, a review of the legislative history indicates that California did not intend for the agency's initial inquiry duties to be limited in any way. Therefore, the agency is required to conduct an initial inquiry in all cases, regardless of how the child is taken into temporary custody. Accordingly, the case is reversed and remanded to the juvenile court for compliance with ICWA in light of this opinion. (SW)