

Reason to Know vs. Undetermined for Determining Whether ICWA Applies

“Reason to Know” is a distinct legal standard as opposed to Undetermined (AKA “Reason to Believe”) that a child is an Indian Child for ICWA purposes. If any information is provided that suggests a child is or may be an Indian Child, even if it cannot be proven, then further inquiry is required.

REASON TO KNOW

- Exists when any of these circumstances are true.
- ICWA is triggered.

“UNDETERMINED”

- Exists when there is information suggesting that any of these circumstances might be true, or insufficient information is presented.
- ICWA is not triggered; however, a diligent effort must be made to investigate whether there is a reason to know the child is an Indian child. 2016 BIA Guidelines, § B.1.
- DCS shall notify the Tribe by mailing a registered or certified Notice with return receipt requested pursuant to 25 CFR § 23.111(c).

INFORMATION SUGGESTING TRIBAL MEMBERSHIP OR ELIGIBLE FOR TRIBAL MEMBERSHIP MAY INCLUDE:

1. Any participant, including the child, informs the Court that the child is an Indian Child. (Not based on DNA).
2. There are family members enrolled or affiliated with a Tribe.
3. If there is any family member who lives/lived on a Reservation or participated in cultural activities.
4. If any family member had a case in Tribal Court or another Court where ICWA applied.
5. Either parent or the child possess an identification card indicating membership in an Indian Tribe.
6. There are other reasons to believe the child/ren might be an Indian Child.

25 CFR § 23.107(c) and 2016 BIA Guidelines, § B.1.

Only Tribes can determine membership, and they have the right to intervene at any time. AZ ST JUV CT Rule 113(a)(1) (Effective: July 1, 2022); and 25 U.S.C. § 1911(c).