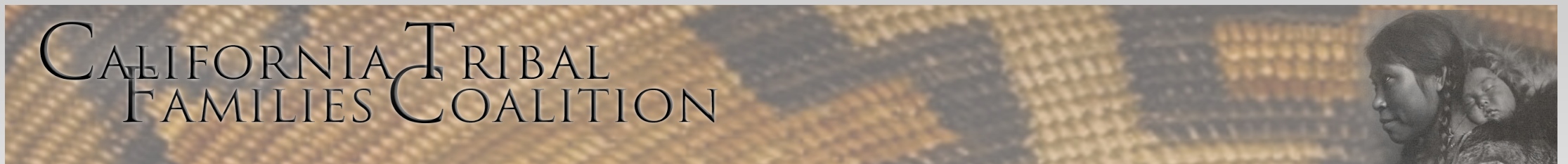


ILPC/TICA Indigenous Law Conference
November 2020

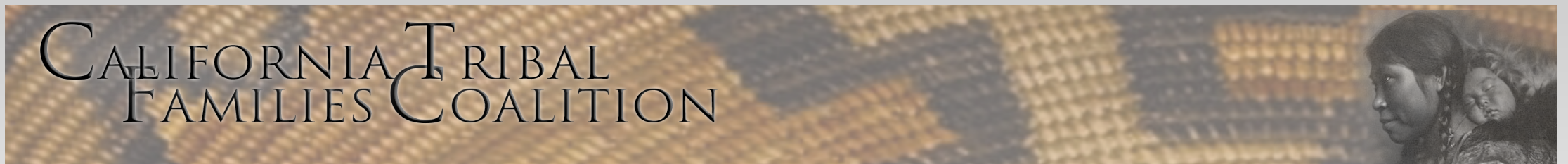
Child Welfare and Social Services Panel

Delia M. Sharpe, Executive Director
California Tribal Families Coalition



What we will be covering today:

- CTFC – Tribally Driven Advocacy in California
- Unique Indian Child developments in California, their nationwide impact and why you should care



What is CTFC?

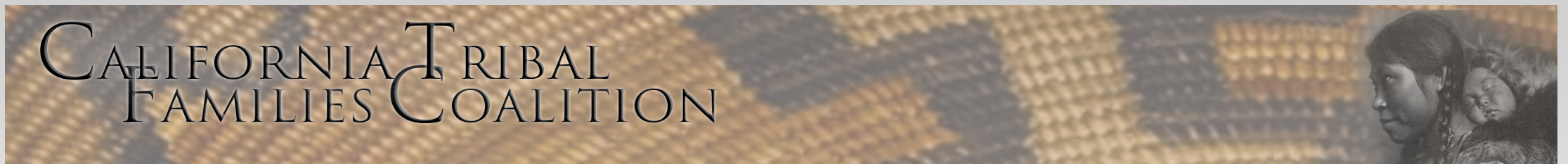
- The ICWA Compliance Task Force Report
- Our work today and in the near future

CALIFORNIA TRIBAL
FAMILIES COALITION



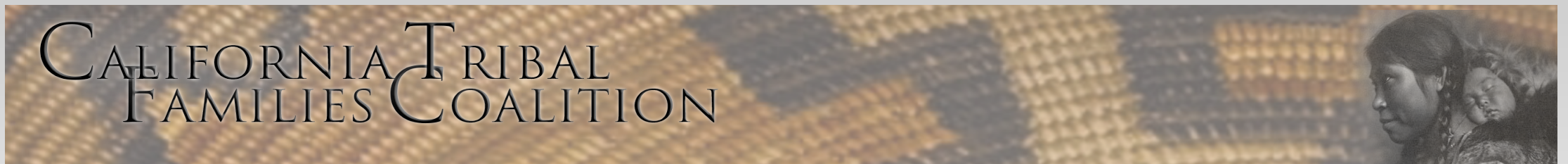
California ICWA Compliance Task Force

- CTFC is a successor organization to the California ICWA Compliance Task Force.
- The California ICWA Compliance Task Force Report may be found at www.caltribalfamilies.org.



Today's work

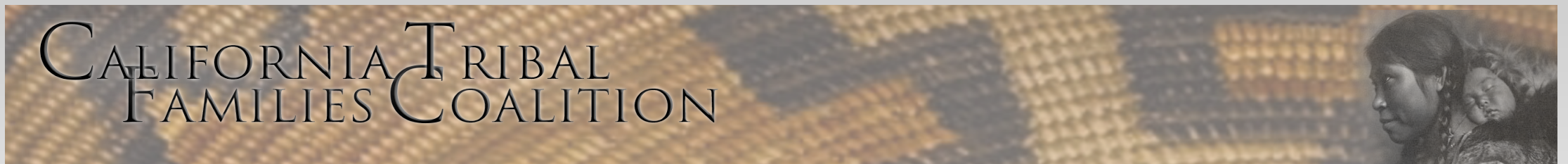
- The mission of the California Tribal Families Coalition is to promote and protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and are at the core of tribal sovereignty and tribal governance.
- Projects Needed to Protect & Advance ICWA in CA
 - Legal Counsel for Tribes in ICWA cases
 - Tracking Court Decisions, Trends and Legal Landmines
 - Data Collection and Data Sharing w/ Tribes
 - Clarity & Resources for Out Of Home Placement Requirements



CTFC legislative work– a few examples:

- Pro hac vice
- Free video/phone access for Tribes in ICWA cases
- Tribal Youth Diversion funding

... and AB 3176 (2018, Waldron), which brings us to the CA inquiry and notice standard



California Inquiry and Notice

Inquiry begins at hotline

Reason to believe = further inquiry (due diligence)

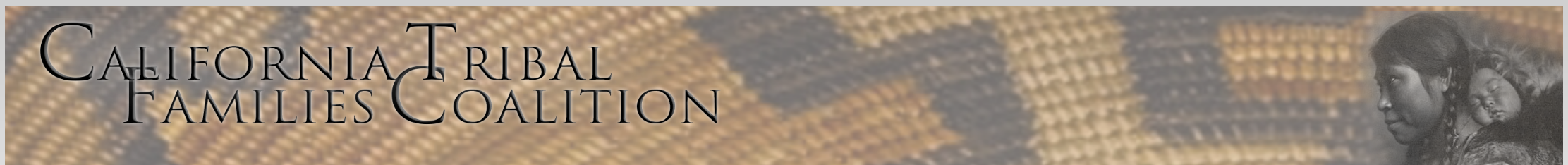
Reason to know = treat the child as an Indian child & apply
ICWA

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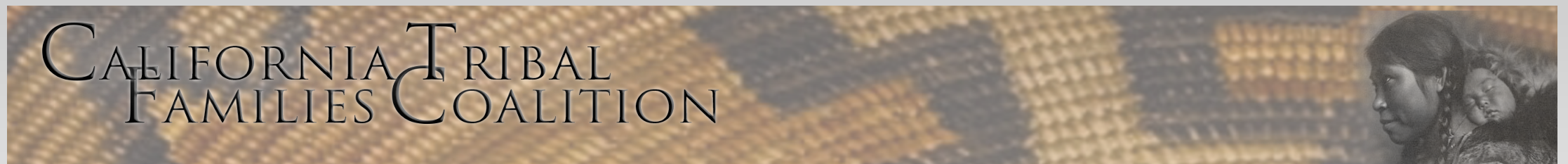
WIC Section 224.2 was intended to clarify the following three step process for conducting inquiry and notice:

- The social worker, probation officer and court must ask the parents *at the outset of every case* about the child's Indian status;
- If that initial inquiry results in information indicating the child *could* be an "Indian child," further inquiry is necessary, including seeking information from additional family members and the tribe(s) the child might be affiliated with; and
- If further inquiry results in reason to know that the child is an "Indian child," ICWA applies and notice must be provided to the child's tribe.



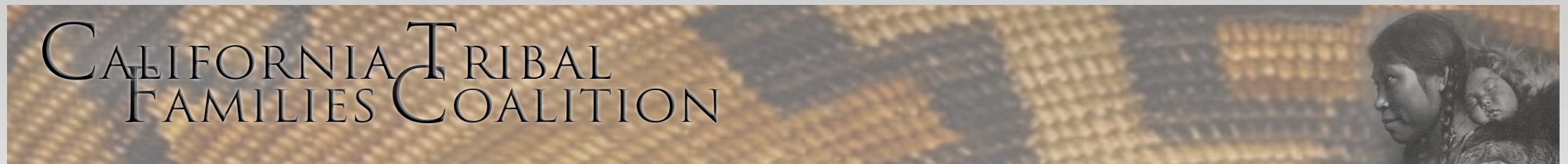
What was the intention?

- This three-step process was intended to create a low threshold for triggering the duty to engage in further inquiry
- Based on numerous California appellate cases, any hint of Indian ancestry triggers the duty of further inquiry.
- What section 224.2 was supposed to make clear is that notice is not triggered unless further inquiry results in information that the child is either a member of a tribe or is eligible for membership.



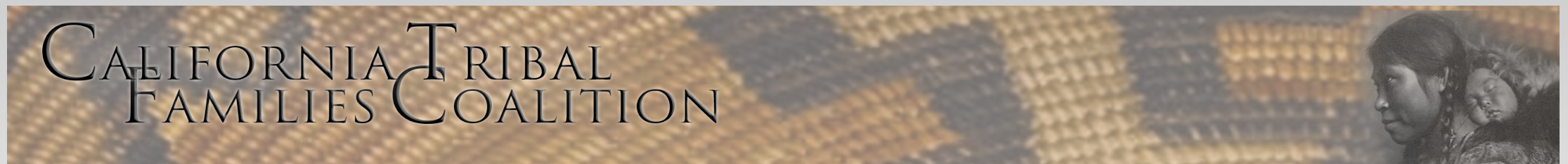
Why was this three-step process the solution?

- The distinction between the threshold for further inquiry and the threshold for notice was intended to ensure that claims of Indian ancestry are thoroughly explored...
- and that when notice is sent to the tribes it includes the necessary family history information for a Tribe to make a meaningful determination of the child's membership status.



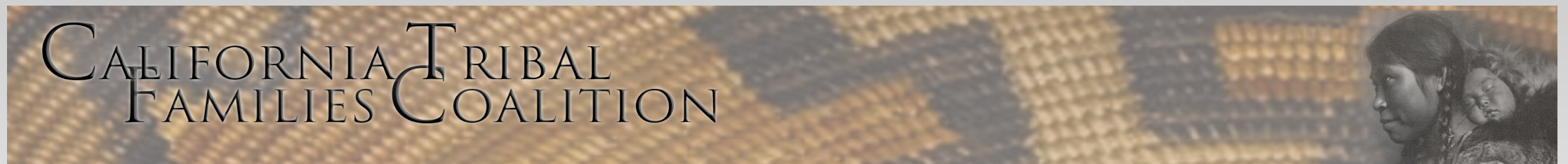
In re Austin J.

- The California Court of Appeal recently ruled, in *In re Austin J.* (2020 2nd Dist., Div. 1) 47 Cal.App.5th 870, that a parent's claim of possible Cherokee ancestry did not trigger a duty to make further inquiry as to whether the parent or her children were members of, or eligible for membership in, an Indian tribe.
- In other words, the social worker had no obligation to contact the Cherokee tribes to ask if the parent or her children were tribal members or eligible for tribal membership.



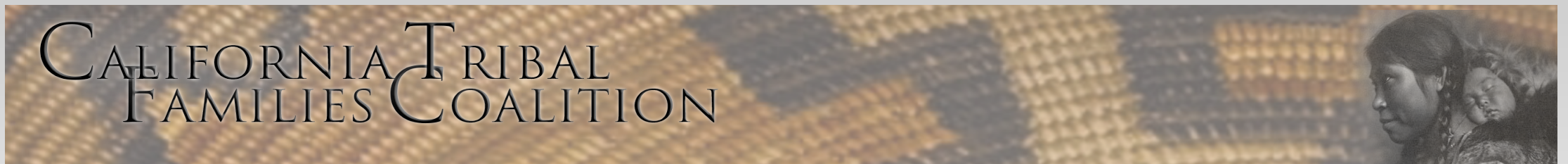
What's the problem with *In re Austin J*?

- This decision essentially eliminates the distinction between the threshold for the duty to engage in further inquiry and the duty to notice.
- According to the court's reasoning, further inquiry is not required unless a parent claims that they are or may be a member of a tribe, alleging just ancestry is not sufficient.



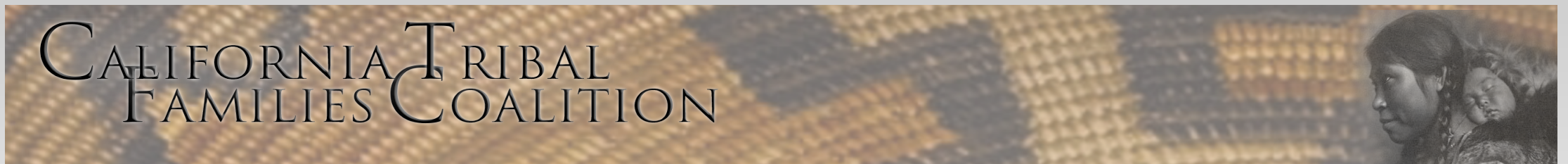
WIC 224.2 Amendment – Austin J. Leg Fix

- CTFC worked with the CA Dept. of Social Services to amend WIC 224.2(e) in an effort to ensure that thorough inquiry is completed to properly identify Native American children to whom ICWA applies and to give meaningful notice to Tribes when such children are at risk of out-of-home placement. (AB 2944, (2020) Stone.)
- This was accomplished by defining “Reason to Believe,” the standard that triggers the full inquiry process.



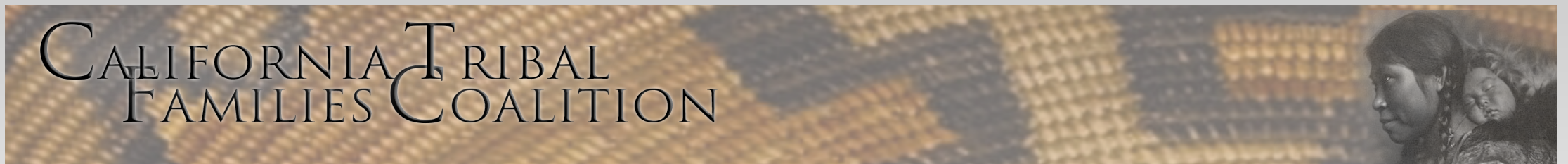
Reason to Believe

- (e) (1) There is reason to believe a child involved in a proceeding is an Indian child whenever the court, social worker, or probation officer has information suggesting that either the parent of the child or the child is a member or may be eligible for membership in an Indian tribe. Information suggesting membership or eligibility for membership includes, but is not limited to, information that indicates, but does not establish, the existence of one or more of the grounds for reason to know enumerated in paragraphs (1) to (6), inclusive, of subdivision (d).



Reason to Know

- (d) There is reason to know a child involved in a proceeding is an Indian child under any of the following circumstances:
 - (1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family informs the court that the child is an Indian child.
 - (2) The residence or domicile of the child, the child's parents, or Indian custodian is on a reservation or in an Alaska Native village.
 - (3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child.
 - (4) The child who is the subject of the proceeding gives the court reason to know that the child is an Indian child.
 - (5) The court is informed that the child is or has been a ward of a tribal court.
 - (6) The court is informed that either parent or the child possess an identification card indicating membership or citizenship in an Indian tribe.



Is it perfect?

- Nope

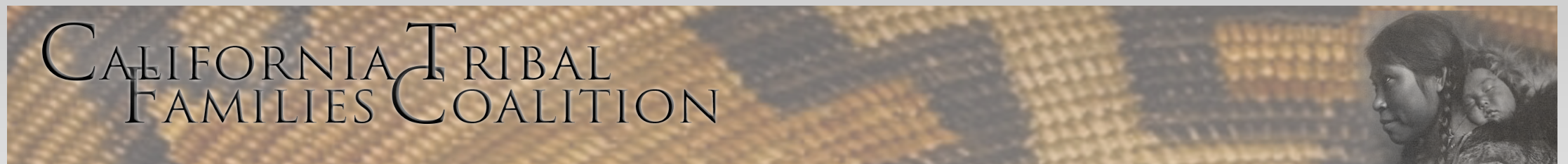
... so how do we fix it?

- California AFCARS

- guided inquiry and notice process

- 1919 Agreements

- how should out-of-state tribes be contacted?



Thank you

delia.sharpe@caltribalfamilies.org

