In re Delila D., --- Cal. Rptr. 3d ---, 2023 WL 4677720 (Ct. App. 4th Dist., July 21, 2023).

- **Holding**: Declining to follow its prior decision in I*n re Robert F.* (2023) 90 Cal.App.5th 492 (*Robert F.*), the Court of Appeals concludes that the duty to inquire of extended family members whether a child in temporary custody of the Department of Public Social Services is or may be an "Indian child" applies regardless of whether the child was taken into custody pursuant to a protective custody warrant.
- **Summary**: The Department of Public Social Services took Delilah D. into custody pursuant to a protective custody warrant. Applying the decision in I*n re Robert F.* (2023) 90 Cal.App.5th 492 (*Robert F.*), the Department concluded that the duty to inquire of "extended family members, others who have an interest in the child, and the party reporting child abuse or neglect" as to whether the child was or may be an "Indian child" did not apply, since custody had been authorized by a warrant. Interpreting California statutes, the court in *Robert F*. had concluded that Welfare and Institutions Code § 224.2(b) "requires a county welfare department to ask extended family members about a child's Indian status *only if* the department has taken the child into temporary custody under [Welfare and Institutions Code] section 306," which the court interpreted to be limited to circumstances where a child is removed without a warrant.

  Here the Court of Appeals concluded that Section 306 "authorizes a department to maintain a child in temporary custody both when the child has been taken from home by a social worker or police officer under exigent circumstances without a warrant … *and* when the child has been taken from home by means of a protective custody warrant issued under section 340 …." Regardless of the means by which a child is initially taken into custody, "it is the *maintaining in custody* that triggers the need for a detention hearing," making significant the fact that the duty of initial inquiry under section 224.2(b) arises when a child is "*placed* into temporary custody" not "*taken* into temporary custody" (emphasis added). Whether taken into custody pursuant to a warrant or not, once a child is "delivered *or placed* into the department's temporary custody," the duty of initial inquiry applies. In short, "[t]here is no practical difference between children taken by warrant and those taken without a warrant, and so there is no reason to distinguish between them for ICWA inquiry purposes."

  The court rejected *Robert F.*'s conclusion that the legislature intended to distinguish between emergency custodies and custodies pursuant to warrant in order to "track federal guidelines for implementing ICWA," concluding that "under both the federal regulations and California law … the 'emergency removal' is *not* the social worker's act of taking the child from home under exigent circumstances. Rather, the emergency removal is the *court's order* detaining the child at the detention hearing, regardless of how the child came to be in the department's custody leading up to that hearing."

  Further, the court concluded that even if *Robert F's* "conclusion that section 306 excludes removals by protective custody warrant were correct, we would still disagree with its conclusion that the duty described in section 224.2(b) does not apply once a child initially removed by warrant is removed from parental custody at the disposition hearing," citing the fact that "section 224.2(b) does not state that the inquiry it describes applies "only if" a child is taken into temporary custody under section 306," and the fact

that “it simply doesn't make sense to apply different initial inquiries depending on how the child was initially removed from home, as that procedural happenstance has nothing to do with a child's ancestry.”

One judge, writing in dissent, would have concluded that the “language of section 224.2, subdivision (b), controls and it only requires that the Department make an inquiry of extended relatives if the child “is placed into the temporary custody of a county welfare department pursuant to Section 306,” and “‘[p]lacing a child into ‘temporary custody of a county welfare department pursuant to [section] 306’ is fundamentally different from taking a child into ‘protective custody’ under section 340’” (quoting *In re Adrian L.* (2022) 86 Cal.App.5th 342 (Kelley, J., concurring)).

- **Relevant (2023) Deskbook Section**: 13:7
- **Comment**: While the court “decline[d] to follow” *Robert F.*, it did not (could not?) expressly overrule it. A summary of *Robert F.* can be found at https://docs.google.com/document/d/109GuiydZNC5nlijEQp5nQ6wetWuFiFdX/edit. Here, the opinion was authored by Justice Slough, with Justice Raphael concurring, and Justice Miller dissenting.