In re Jerry R., --- Cal. Rptr. 3d ---, 2023 WL 5843770 (Ct. App. 5th Dist., September 11, 2023).

- **Holding**: Whether initially taken into custody by social worker or peace officer, with or without a warrant, once the child is received and maintained in temporary custody by a social worker, California statutes require the county welfare department to inquire of extended family members whether the child is an "Indian child."
- **Summary**: Father and mother appealed the juvenile court's order terminating their parental rights to three of their children on the basis that the County Community Services Agency (Agency) failed to conduct a proper, adequate, and duly diligent inquiry into whether the children are or may be Indian children.

  Citing the recent decisions in *In re Robert F*. (2023) 90 Cal.App.5th 492, review granted July 26, 2023, S279743, and *In re Ja.O*. (2023) 91 Cal.App.5th 672, review granted July 26, 2023, S280572), the Agency argued that the broad duty of inquiry under California Welfare and Institutions Code § 224.2, subdivision (b), does not apply in cases where, as here, children are taken into protective custody by warrant under section 340, subdivision (a) or (b).

  The court rejected the Agency's argument, following instead the decision in *In re Delila D.* (2023) 93 Cal.App.5th 953, which had held that regardless of whether a child is initially *taken* into custody without a warrant under exigent circumstances. or is taken into protective custody by warrant under section 340, once delivered to a county social worker they are *received and maintained* in the temporary custody of the social worker, thus falling within the ambit of section 306, subdivision (a)(1) (a county social worker may "[r]eceive and maintain, pending investigation, temporary custody of a child who is described in Section 300, and who has been delivered by a peace officer." In short, "[w]hen a child is removed by warrant, the taking is authorized by section 340, and the holding or maintaining in custody is authorized by section 306, subdivision (a)(1) … Whether initially taken into custody by social worker or peace officer, with or without a warrant, temporary custody of the child is with the county welfare department, triggering the need to inquire whether the child is an Indian child under section 224.2 (§ 306, subd. (b)), and the duty to investigate (§ 309, subd. (a))." This duty of inquiry expands on minimum ICWA requirements.

  Here, the court, applying a "hybrid standard [reviewing] the court's determination for substantial evidence and abuse of discretion," concluded that the duty of inquiry was not met because the Agency did not ask any relatives other than the mother and father about possible Indian ancestry, despite having the names and addresses of over 40 relatives. While the mother had indicated possible membership or eligibility for membership in the Cherokee and Navajo Tribes, and those Tribes had been notified, the court concluded that the law requires more than merely inquiring of the parents, because without further inquiry it was "impossible to determine whether Mother provided accurate information or not." Such error was prejudicial to any tribes that the Agency may have failed to identify due to inadequate inquiry, and the matter was remanded to the court for "the limited purpose of ensuring compliance with the inquiry and documentation provisions set forth in section 224.2 and rule 5.481."
- **Relevant (2023) Deskbook Section**: 13:18

- **Comment**: This question of whether § 224.2 applies to children taken into protective custody via warrant is pending before the California Supreme Court.