



CDSS

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DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES



EDMUND G. BROWN JR.
GOVERNOR

May 2, 2016

ALL COUNTY INFORMATION NOTICE NO. I-29-16

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL COUNTY CHILD WELFARE DIRECTORS
ALL COUNTY PROBATION OFFICERS
ALL COUNTY BOARDS OF SUPERVISORS
ALL CHIEF PROBATION OFFICERS
ALL TITLE IV-E AGREEMENT TRIBES

SUBJECT: ANTICIPATED RELEASE OF REVISED CALIFORNIA MANUAL OF POLICIES AND PROCEDURES, DIVISION 31 REGULATIONS

REFERENCE: THE FEDERAL INDIAN CHILD WELFARE ACT (ICWA) OF 1978 CODIFIED AT 25 U.S.C. SECTION 1901 ET SEQ; SENATE BILL (SB) 678, CHAPTER 838, STATUTES OF 2006; WELFARE AND INSTITUTIONS CODE (W&IC) SECTIONS 224.6, 361.7, 366.26; FAMILY CODE SECTIONS 177, 7892.5; PROBATE CODE SECTION 1459.5; [ALL COUNTY LETTER NO. 08-02.](#)

The purpose of this All County Information Notice (ACIN) is to inform counties of the impending release of revised California Manual of Policies and Procedures (MPP), Division 31 Regulations, to fully incorporate the requirements of the ICWA, as specified in California state law. This effort has involved years of extensive collaboration and consultation between the California Department of Social Services (CDSS), counties and Tribal Stakeholders. The revised MPP Division 31 Regulations¹ will comprehensively incorporate the requirements under Senate Bill (SB) 678 as mandated by the ICWA, and elaborated upon by the Bureau of Indian Affairs (BIA) *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings*, released on February 25, 2015.

Revised Manual of Policies and Procedures, Division 31 Regulations

The CDSS Children and Family Services Division (CFSD) is responsible for ensuring counties follow law and regulations regarding Native American child welfare practice in

¹<http://www.dss.cahwnet.gov/ord/PG4808.htm>

accordance with the federal ICWA, and its incorporation through enactment of SB 678 (chapter 838, statutes of 2006) into the California Welfare and Institutions, Family and Probate Codes.

The Integration of the ICWA throughout the MPP Division 31 Regulations seeks to provide guidance on **Active Efforts, Inquiry, Identifying Tribal Affiliation, Noticing, Placement Preferences, Tribally Approved Homes, and Tribal Customary Adoptions**. In addition, effort is being made to augment the MPP Division 31 Regulations by drawing from areas in the *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings*² which Tribal Stakeholders and the CDSS agree provide an important resource to counties in the application of the ICWA. The BIA Guidelines promote best practices for compliance with the goals and provisions of the ICWA by providing State courts and counties a framework to follow.

The MPP Division 31 proposed regulations' first comment period provided valuable feedback which resulted in extensive revisions. The regulations are expected to be released in the summer of 2016 pending any additional comments that may arise from the second comment period. In preparation for their release, the CDSS encourages Child Welfare Service (CWS) agencies and Probation Departments to become familiar with the BIA Guidelines as well as the proposed regulations. To the extent that these activities align with SB 678 and the proposed MPP Division 31 Regulations, the CDSS encourages CWS agencies and Probation Departments to update policies and procedures and incorporate changes into practice. As an example, the law requires that active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe and other Indian social service agencies, and individual Indian caregiver service providers.³ The following Active Efforts activities are specified in the BIA guidelines and will be incorporated into the MPP Division 31 Regulations consistent with the W&I Sections 224.6, 361.7, 366.26:

Engaging the Indian child, the Indian child's parents, extended family members, custodian(s):

- Taking steps necessary to keep siblings together;
- Identifying culturally appropriate services and helping the parents to overcome barriers, including actively assisting the parents to obtain such services;
- Identifying, notifying and inviting representatives of the Indian child's tribe to participate;

²<http://www.bia.gov/cs/groups/public/documents/text/idc1-029447.pdf>

³http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC§ionNum=361.7

- Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;
- Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;
- Offering and employing available and culturally appropriate family preservation strategies;
- Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- Notifying and consulting with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child;
- Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;
- Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or extended family in utilizing and accessing those resources;
- Monitoring progress and participation in services;
- Providing consideration of alternative ways of addressing the needs of the Indian child's parents or extended family, if services do not exist or if existing services are not available;
- Supporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and
- Providing post-reunification services and monitoring.

These Active Efforts activities, combined with the aforementioned guidance areas, are an integral part of the ICWA compliance process. Please refer to the proposed MPP Division 31 Regulations and corresponding BIA Guidelines for detailed requirements in regard to all the provisions.

Inquiry and its Importance in Establishing Collaborative Relationships

Engagements of tribes and/or tribal representatives in the development of processes that support the efforts described above are critical to their success. Therefore, the CDSS encourages the development of strong, cooperative relationships between counties and tribes with the common goal of meeting ICWA requirements and attaining outcomes that are in the best interest of the child. To support the development of such relationships, CWS agencies and Probation Departments should collaborate with tribes located within the county, as well as with tribes whose children reside in the county. Many counties have already engaged tribes in such activities and are encouraged to

continue these efforts as they incorporate emerging regulatory changes and in seeking additional opportunities for successful outcomes consistent with these requirements. Early identification of Indian children is imperative, therefore CWS agencies and Probation Departments should ask whether a child is a Native American child at the earliest point of contact, inquire about tribal affiliation and when possible, immediately proceed to inform the child's tribe, even before formal notice has occurred. This will facilitate the timely initiation of collaborative efforts between counties and tribes. By engaging in early contact, it is much more likely that pre-placement activities will comply with the Active Efforts requirement to provide remedial services and rehabilitative programs designed to prevent the breakup of the Native American family. The All County Letter (ACL) 08-02⁴ released January 30, 2008, provides specific guidance regarding duty to inquire at first contact, noticing the tribes, and obligations once the child has been confirmed to be a member of a tribe.

Conclusion

The CDSS is confident the revised MPP Division 31 Regulations will provide a framework to support best practices to promote compliance with applicable laws and regulations that will maintain needed continuity in the lives of Native American children. Upon the completion of the revised MPP Division 31 Regulations, further guidance in the form of an ACL will be released to provide additional instruction to CWS Agencies and Probation Departments.

Finally, on May 19, 2015, the CDSS responded to proposed regulations released by the Bureau of Indian Affairs on February 25, 2015. Upon the finalization of these regulations, the CDSS anticipates that there will be further changes to the MPP Division 31 Regulations and/or guidance to counties. Counties are encouraged to monitor changes to federal law and regulation in anticipation of these changes. The CDSS is available for additional guidance.

If you have any questions or need further information, please contact the Child Welfare Policy and Program Development Bureau, Child Safety Unit at (916) 651-6160.

Sincerely,

Original Document Signed By:

Kevin Gaines, Chief
Child Protection and Family Support Branch

⁴ www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl08/08-02.pdf