

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #2 Indian Child Welfare Act Integration throughout Division 31

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Statements or arguments relating to the proposals may be submitted in writing, e-mail or by facsimile to the address/number listed at the bottom of this page. All comments must be received by 5:00 p.m. on September 16, 2015. Also, any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held September 16, 2015, as follows:

Office Building # 8
744 P Street, Room 103
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahw.net.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT: Office of Regulations Development
California Department of Social Services
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CHAPTERS

31-000 General Requirements, 31-100 Intake, 31-200 Assessment and Case Plan, 31-300 Service Delivery, 31-400 Placement, 31-500 Special Requirements.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current laws and regulations provide procedures for county social workers in dealing with Indian child welfare, including but not limited to, adoption, placement, custody, and working with Indian tribes and California child welfare agencies.

Existing laws and regulations:

Indian Child Welfare Act, 25 U.S.C. Section 1901, Public Law (P.L.) 95-608
Title IV-E of the Social Security Act, 42 U.S.C. section 670 et. seq.
Senate Bill 678 (Chapter 838, Statutes of 2006) Pertinent sections: 29, 30, 31, 32, 33, 34, 35, 44, 45, 48, 49, 50, 52, 53, 54 and 55
Assembly Bill 12 (Chapter 559, Statutes of 2010) Pertinent sections: 5, 13, 14 and 66
Assembly Bill 1325 (Chapter 287, Statutes of 2009) Pertinent sections: 6, 7, 12, 15 and 16
Assembly Bill 1695 (Chapter 653, Statutes of 2001) Pertinent sections: 2, 11.3 and 11.6
Assembly Bill 1712 (Chapter 846, Statutes of 2012) Pertinent sections: 4, 15, 15.1, 15.2, 15.3, 21, 23 and 56
Assembly Bill 2417 (Chapter 467, Statutes of 2010)
Assembly Bill 2418 (Chapter 468, Statutes of 2010)
Senate Bill 1460 (Chapter 772, Statutes of 2014) Pertinent sections 6, 8, 12, 14 and 15
California Rules of Court, rules 5.480, 5.481, 5.482, 5.484, 5.552, and 5.690

The following forms are incorporated by reference in the regulations:

AAP 4 (Rev. 9/13) - Eligibility Certification Adoption Assistance Program
FC 2 (Rev. 11/04) - Statement of Facts Supporting Eligibility for Aid to Families with Dependent Children (AFDC) Foster Care
FC 3 (Rev. 11/04) - Determination of Federal AFDC-FC Eligibility
FC 3 A (Supplement) (Rev. 11/04) - AFDC-FG/U Worksheet
ICPC-100A (Rev. 8/01) - Interstate Compact Placement Request
ICPC-100B (Rev. 8/01) - Interstate Compact Report on Child's Placement Status
ICWA-010(A)" (Rev. 1/08) - Indian Child Inquiry Attachment
ICWA-020 (Rev. 1/08) - Parental Notification of Indian Status
ICWA-030 (Rev. 1/08) - Notice of Child Custody Proceeding for Indian Child
ICWA-030(A) (Rev. 1/08) - Attachment to Notice of Child Custody Proceeding for Indian Child
KG-2 (Rev. 1/11) - Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance Payment
SOC 155C (Rev. 1/00) - Voluntary Placement Agreement Parent/Agency (Indian Child)

The AAP, FC, KG, ICPC and SOC forms are available on the CDSS website at:

<http://www.cdss.ca.gov/cdssweb/PG19.htm>

The ICWA forms are available on the Judicial Council's website at <http://www.courts.ca.gov>

This regulation change is made for purposes of clarity and non-duplication as the requirements that currently are included in Sections 31-515 and 31-520 will now be included throughout the Manual of Policies and Procedures Division 31 regulations, which will cause these sections to be duplicative therefore they are being repealed in this change. Until now, the ICWA requirements were separated from the rest of Division 31 regulations (currently Sections 31-515 and 31-520). These regulations are amended because of Senate Bill (SB) 678 Statutes of 2006 which was passed to incorporate into various state codes, minimum federal standards for Indian child custody proceedings as required by the ICWA of 1978 (P.L. 95-608) codified in the U.S.C. at Title 25 section 1901, et. seq. The requirements specified by SB 678, apply at specific points throughout a child's case. State child welfare agencies and State courts must follow these requirements when removing Indian children from their homes and placing them into foster care or adoptive homes.

Feedback from social workers and stakeholders is that keeping the related standards and requirements separate from the rest of Division 31 regulations as Special Requirements, at Chapter 31-500 in Sections 31-515 and 31-520, diminishes the extent to which compliance with ICWA occurs. The ICWA requirements are more likely to be overlooked during the different stages of a child's case when an ICWA standard is required. The modification to include ICWA standards throughout Division 31 adds clarity and consistency by addressing each ICWA requirement at the various points in the life of a child's child welfare case when the ICWA requirements are applicable.

The anticipated benefits of the proposed changes to the Division 31 Regulations would be: improved state and county compliance with the requirements of the federal mandates of ICWA, as well as state law compliance regarding county child welfare service agencies involving Indian children. These changes will:

- greatly improve the working relationship between the State and California Tribes;
- promote better collaboration between child welfare agencies and tribes; and
- produce better outcomes for Indian children that come into contact with California child welfare agencies.

Determination of Inconsistency/Incompatible with Existing State Regulations

The CDSS has made an initial determination that the proposed regulations are not inconsistent or incompatible with existing regulations. The CDSS has evaluated the proposed regulations and found that these are the only regulations concerning county social workers activities dealing with Indian Child Welfare; therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

COST ESTIMATE

1. Costs or Savings to State Agencies: No fiscal impact.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: No fiscal impact.
3. Nondiscretionary Costs or Savings to Local Agencies: No fiscal impact.

4. Federal Funding to State Agencies: No fiscal impact.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination is due to the fact that these regulations only pertain to child welfare services agencies, not private businesses.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action because these regulations are only applicable to state and county agencies.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The CDSS has made an initial determination that there is no economic impact on California businesses as a result of this regulatory action because these regulations are only applicable to state and county agencies (i.e., county social workers' activities). The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

Creation or Elimination of Jobs Within the State of California

Because these regulations only affect the actions of county child welfare agency staff, the CDSS has made the initial determination that this regulatory action will not have an impact on the creation or elimination of jobs within the state. The proposed regulations will not create or eliminate jobs within the state because they incorporate existing state and federal law, including ICWA, that pertains to Indian children regarding county social workers' actions. Further, technical, conforming changes, such as integrating, renumbering of sections and amending cross references are being incorporated in this regulatory action.

Creation or Elimination of Businesses Including Expansion or Elimination of Existing Businesses Within the State of California

Because these regulations only affect the actions of county child welfare agency staff, the CDSS has made the initial determination that this regulatory action will not have an impact on the creation or elimination of businesses including expansion or elimination of existing businesses within the state. The proposed regulations will not create or eliminate businesses including expansion or elimination of existing businesses within the state because they incorporate existing state and federal law, including ICWA, that pertains to Indian children regarding county social workers' actions. Further, technical, conforming changes, such as integrating, renumbering of sections and amending cross references are being incorporated in this regulatory action.

Benefits of the Regulations

The benefits of these regulations are to update the regulations on changes in laws and provide clarification as to the multiple changes in law and expressed needs from stakeholders for compliance clarification. Although guidance has been given by the Department to counties in the form of ACLs and ACINs, they are not as effective because they are not consolidated into one location, such as the Manual of Policies and Procedures Division 31 regulations. These regulations are expected to bring clarification, consistency and increase compliance on the multiple requirements of law. These changes will also 1) improve the working relationship between the state and California Tribes; 2) promote better collaboration between child welfare agencies and tribes; and 3) produce better outcomes for Indian children that come into contact with California child welfare agencies.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

The regulations in ICWA related regulations that are in current Sections 31-515 and 31-520, have not been updated since 1993. The alternative used by the Department in lieu of regulation changes as been to issue ACLs or ACINs as part of its duty to keep county social workers informed on requirements associated with the federal ICWA, its incorporation into California statutes, and other legislative enactments or issues associated with Indian children taken into county protective custody. The following are a sampling:

ACIN 1-43-04 (September 2004) ICWA Frequently Asked Questions

ACL 08-02 (January 28, 2008) Senate Bill (SB) 678, (Chapter 838, Statutes of 2006), Indian Child Welfare Changes in State Law

ACIN 1-86-08 (November 20, 2008) Tribally Approved Homes

ACL 10-17 (March 24, 2010) Assembly Bill (AB) 1325, Chapter 287, Statutes of 2009, Tribal Customary Adoption

ACIN 1-40-10 (April 29, 2010) Requirement of the Use of an Expert Witness

ACL10-47 (October 27, 2010) Implementation of Tribal Customary Adoption AB 1325, (Chapter 287, Statutes of 2009)

ACL 14-15 (February 14, 2014) Federal Requirements for the Transfer of Indian Children to a Tribal Title IV-E Agency or an Indian Tribe with a Title IV-E Agreement

The CDSS has concluded that compliance and implementation is better served by updating the regulations rather than continue to rely on multiple ACLs or ACINs. Social workers may not always be aware of the ACLs or ACINs and or do not have them readily available. Social workers are expected to work with and follow regulations in their daily work.

In developing the regulatory action, CDSS also considered and agreed with stakeholders input requesting to integrate the Division 31, Special Requirements, sections 31-515 and 31-520 throughout the Division 31 regulations and to update the regulations. This regulatory action does just that without impact on small business because these regulations apply only to state and local agencies.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The CDSS has convened workgroups and there have been no reasonable alternatives presented.

AUTHORITY AND REFERENCE CITATIONS

25 USC 1901 et seq.; 42 USC 670 et. seq.; 45 CFR 1356.21(d) and 1356.67; Sections 224, 300 et seq., 326, 358, 361, 366, 601, 602 et seq., 636, 727, 827, and 8600.5, Welfare and Institutions Code; Sections 177, 7907.3 and 8600.5, Family Code; California Rules of Court, rules 5.480, 5.481, 5.482, 5.483, 5.484, 5.485, 5.486, 5.487, 5.534(i), 5.552, 5.690, 7.1015 and 5.725; Penal Code Section 11169; Prob. Code Sections 1459.5 and 1460.2; *Gomez v. Saenz* Settlement Agreement and Court Order, Case No. BC284896.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

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