

**Draft Division 31 Regulations Amendments Per State and Federal Statutory ICWA  
Changes/Requirements  
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**DRAFT DIVISION 31 REGULATION AMENDMENTS  
TO CLARIFY ICWA REQUIREMENTS**

**Amend Section 31-001 to read:**

**31-001      GENERAL**

**31-001**

- .1    The requirements specified in Sections 31-005 through 31-525 shall be met by the county in the administration of child welfare services.
  
- .2    The requirements specified in Section 31-001 through Section 31-525 shall be met by county probation departments when placing children in out-of-home care.
  
- .3    The following special provisions shall also apply:
  - .31    (Continued)
  
  - .32    Provision of services to an Indian child shall be subject to the additional requirements specified in Section 31-515 and 31-520 integrated throughout Division 31 Chapters 31-000 through 31-500.
  
  - .33    When considering the "best interest of the child" social workers must adhere to Welfare and Institutions Code section 224(a)(2), which specifies that it is in the best interest of an Indian child that connection to its tribe and tribal community is encouraged and protected regardless of whether the child is in the physical custody of the Indian parent or Indian custodian(s) at the commencement of a child custody proceeding, the parental rights of the child's parents have been terminated or where the child has resided or been domiciled.
  
  - ~~.33~~.34    (Continued)
  
  - ~~.34~~.35    (Continued)
  
  - ~~.35~~.36    (Continued)

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- ~~.35~~ (Continued)

**HANDBOOK ENDS HERE**

Authority Cited: Sections 10553, 10554, 16520, and 16521, Welfare and Institutions Code; and Assembly Bill 1695, Section 21, Chapter 653, Statutes of 2001.

Reference: Sections 224, 361.2(c) and (d), 727, 11404, 16520, and 16521, Welfare and Institutions Code; Section 7901, Family Code; 25 USCA ~~Section~~ 1901 et seq.; and 42 USC ~~Sections~~ 675 and 677.

**Amend Section 31-002 to read:**

**31-002 DEFINITIONS**

**31-002**

- (a) (1) "Active efforts" means, in the case of an Indian child, all actions taken by a county to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe, utilizes the available resources of the child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers, as further specified in Section 31-135.23 and Section 31-420.3 with respect to the active efforts to comply with ICWA placement preferences.

(2) through (11) renumbered from (4) through (40) respectively (Continued)

(b) (1) (Continued)

(f) (7) (Continued)

- (8) "Foster care" means the provision of 24-hour care and supervision to a child who has been placed by a child placing agency, including county child welfare services and probation departments, in one of the following types of foster homes:

(F) (Continued)

(G) A tribally licensed or approved home, in the case of an Indian child.

(H) A Tribally Specified Home, in the case of an Indian child, which may include any of the above.

(9) (Continued)

- (i) (3) "Indian" means a person who is a member of an Indian tribe, or who is an Alaskan Native and a member of a Regional Corporation as defined in 43 USC 1606.

(A) "Indian child~~(ren)~~" means any unmarried person who is under age 18 years of age and who is either (a) a member of an Indian tribe; or (b) who is eligible for tribal-membership in an Indian tribe and is the biological child of a tribe member of an Indian tribe.

1. Where the Indian child's dependency case continues beyond age 18, the child will continue to be defined an Indian child up to age 21, in which case ICWA standards will continue to apply unless the child or an attorney on the child's behalf, to chooses to no longer be defined as an Indian child.

## HANDBOOK BEGINS HERE

The Welfare and Institutions Code section 224.1(b) states "As used in connection with an Indian child's dependency proceeding, the term "Indian child" also means an unmarried person who is 18 years of age or over, but under 21 years of age, who is a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe, and who is under the jurisdiction of the dependency court, unless that person or his or her attorney elects not to be considered an Indian child for purposes of the Indian child custody proceeding."

## HANDBOOK ENDS HERE

(B) (Continued)

(C) "Indian child's parent" means any biological parent or parents of an Indian child; or any Indian person who has lawfully adopted an Indian child-, including Lawful adoptions include adoptions under tribal law or custom. The term does not include the unwed father ~~when~~ where paternity has not been acknowledged or established.

(D) (Continued)

(E) "Indian Child Welfare Act (ICWA)" means the Indian Child Welfare Act, codified in 25 U.S.C. Chapter 21, 1901, et seq. which sets forth the federal law that establishes minimum federal standards that must be applied in state child custody proceedings involving an Indian child.

~~(E)~~(F) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom; or under state law; or to whom temporary physical care, custody; and control has been transferred by the parent(s) of such Indian child.

~~(F)~~(G) (Continued)

~~(G)~~(H) "Indian tribal court" means a court, ~~recognized by the Secretary of the Interior,~~ with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses; a court established and operated under the code or custom of an Indian tribe; or any other administrative body of a tribe which is vested with ~~jurisdiction~~ authority over child custody proceedings.

~~(H)~~(I) (Continued)

(n) (2) (Continued)

(3) "Non-Federally Recognized Tribe" means an Indian tribe, band, nation or other organized group or community of Indians that is not recognized by the Secretary of the Interior as eligible for the federal services provided to Indians.

~~(3)~~(4)(Continued)

(p) (2) (Continued)

(3) "Permanency Alternative" means the type of permanency, i.e., adoption, Tribal Customary Adoption in the case of an Indian child, guardianship, and long-term foster care, or a plan for transitional independent living pursuant to Section 31-525, selected for the child if family reunification fails.

(4) (Continued)

(7) (Continued)

(8) "Pre-placement preventive services" means those services designed to help children remain with their families by preventing or eliminating the need for removing the child from the home. In the case of an Indian child, pre-placement preventive services include active efforts consistent with Section 31-135.23 designed to prevent the breakup of the Indian family. Preplacement preventive services are early intervention services, emergency response services and family maintenance services.

(9) (Continued)

(q) ~~Reserved-~~ (1) "Qualified expert witness" means a person required to testify in an Indian child custody proceeding on whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. A qualified expert witness may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, tribal historian, or tribal elder, provided the individual is not an employee of the person or agency recommending foster care placement or termination of parental rights.

(r) (1) (Continued)

(t) (6) (Continued)

- (7) "Tribal Child Welfare Agency" means an entity designated by a federally recognized tribe as authorized to approve a home consistent with the federal Indian Child Welfare Act (25 U.S.C. 1903 et. Seq.), for the purpose of placement of an Indian child into foster or adoptive care, including the authority to conduct a criminal or child abuse background check of an individual who is a prospective foster parent or adoptive parent, an adult who resides or is employed in the home of an applicant for approval, or an employee of a tribal child welfare agency who may have contact with a child.
- (8) "Tribal Customary Adoption" means an adoption of an Indian child which pursuant to Welfare and Institutions Code Section 366.24, is finalized for an Indian child who is a dependent of a county court, within the customs, laws or traditions of the child's tribe, and where termination of parental rights is not required to effectuate the adoption.
- (9) "Tribal Temporary Assistance to Needy Families (Tribal TANF)" refers to TANF program(s) operated by a federally-recognized American Indian tribe or association of tribes which have entered into an agreement with the federal government to conduct a Tribal TANF program; and are authorized to provide TANF services to Indian people in the service area specified in the agreement.
- (10) "Tribal Title IV-E Agency" means a tribe, consortium of tribes, or tribal organization that has entered into an agreement with either the state or federal government to have oversight of its own foster care program and receive Title IV-E funding for the cases of Indian children in its care.
- (11) "Tribally Approved Home" means a home that has been licensed or approved by an Indian tribe for foster care or adoptive placement of an Indian child using standards established by the tribe pursuant to ICWA at Title 25, U.S.C. 1915, is not required to be licensed by the state or county, and is equivalent to a state or county licensed home. Welfare and Institutions Code section 361.4 requirements regarding caregiver background checks apply to a Tribally Approved Home.
- (12) Tribally Specified Home" means a home that a tribe designates as its preferred placement option for an Indian child who is in the custody of the county. This may include but not be limited to, any of the placement options outlined in Section 31-002(f)(8).

(u) (1) (Continued)

Authority Cited: Sections 10553, 10554, and 10850.4, Welfare and Institutions Code and Assembly Bill 1695, Section 21, Chapter 653, Statutes of 2001.

Reference: Sections 224.1, 224.1(b), 224.6, 300, 300(c), 300(e), 306(b), 306.6, 309(d), 319, 319(f), 727, 11402, and 16507.5(b) (as amended by AB 1695, Chapter 653, Statutes of 2001), 361, 361.2, 361.2(e)(7), 361.2(h), 361.3, 361.3(a)(8), 361.31, 361.31(k), 361.4, 361.7, 362.7, 366.22, 366.24, 366.3(e)(4) and (e)(8), 391, 636.1(c), 706.6(o), 727, 727.2, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, 10553, 10553.1, 10553.12, 10554, 10850.4, 11100, 11105, 11108.15, 11155.5, 11400(a), 11402, 11404, 11467.1, 16001.5, 16001.9, 16010, 16012, and 16501, 16501(a)(3), 16501.1(e)(9), 16501.1(f)(7), 16503, 16504, 16506, 16506(c), 16507.5(b), 16516.5, 16520, 16521, 17736, and 18951(d), Welfare and Institutions Code; Sections 11105.08, 11165 et seq., and 11170, Penal Code; Section 265, Civil Code; 25 USC 1901, 1903, 1912(d), 1915, 1919, and 1931(b), 42 U.S.C. Section 675, 675(5), 679c; 45 CFR 233.120; Sections 1502, 1502(a)(8), 1505.2, 1505(o), 1522, 1522.06, and 1530.8, Health and Safety Code; 42 U.S.C. 675(5); Sections 7002, 7901, 7911, 7911.1, and 7912, Family Code; Public Law 105-89 (Adoption and Safe Families Act of 1977); and California Rules of Court, ~~Rule 5.552 of the California Rules of Court.~~

**Amend Section 31-003 to read:**

**31-003 DEFINITIONS -- FORMS**

**31-003**

- (a) ~~(Reserved)~~ (1) "AAP 4" (Rev. 9/13) means the form entitled "Eligibility Certification Adoption Assistance Program" hereby incorporated in its entirety by reference.
- (b) (Continued)
- (f) ~~(Reserved)~~ (1) "FC 2" (Rev. 11/04) means the form entitled "Statement of Facts Supporting Eligibility for Aid to Families with Dependent Children (AFDC) Foster Care" hereby incorporated in its entirety by reference.
  - (2) "FC 3" (Rev. 11/04) means the form entitled "Determination of Federal AFDC-FC Eligibility" hereby incorporated in its entirety by reference.
  - (3) "FC 3 A (Supplement)" (Rev. 11/04) means the form entitled "AFDC-FG/U Worksheet" hereby incorporated in its entirety by reference.
- (g) (Continued)
- (i) ~~(Reserved)~~ (1) "ICPC-100A" (Rev. 8/01) means the form entitled "Interstate Compact Placement Request" hereby incorporated in its entirety by reference.
  - (2) "ICPC-100B" (Rev. 8/01) means the form entitled "Interstate Compact Report on Child's Placement Status" hereby incorporated in its entirety by reference.
- (j) ~~(Reserved)~~ Judicial Council Forms:
  - (1) "ICWA-010(A)" (Rev. 1/08) means the form entitled "Indian Child Inquiry Attachment" hereby incorporated in its entirety by reference.
  - (2) "ICWA-020" (Rev. 1/08) means the form entitled "Parental Notification of Indian Status" hereby incorporated by reference.
  - (3) "ICWA-030" (Rev. 1/08) means the form entitled "Notice of Child Custody Proceeding for Indian Child" hereby incorporated in its entirety by reference.
  - (4) "ICWA-030(A)" (Rev. 1/08) means the form entitled "Attachment to Notice of Child Custody Proceeding for Indian Child" hereby incorporated in its entirety by reference.
- (k) ~~(Reserved)~~ (1) "KG-2" (Rev. 1/11) means the form entitled "Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance Payment" hereby incorporated in its entirety by reference.
- (l) (Continued)

(r) (Continued)

(s) (1) "SOC 155C" (Rev. 1/00) means the form entitled "Voluntary Placement Agreement Parent/Agency (Indian Child)" hereby incorporated in its entirety by reference.

~~(12)~~ (Continued)

~~(23)~~ (Continued)

~~(34)~~ (Continued)

~~(45)~~ (Continued)

Authority Cited: Sections 10553 and 10554, and 10850.4, Welfare and Institutions Code.

Reference: *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896; Section 11169, Penal Code; ~~and~~ Sections 361.7, 827 and 10850.4, Welfare and Institutions Code; and 42 USC 5106; 25 USC 1912(d); California Rules of Court, rule 5.481 and 5.482; and 45 CFR 1356.21(d).

**Amend Section 31-005 to read:**

**31-005 CHILD WELFARE PROGRAM SUPPORT ACTIVITIES**

**31-005**

- .1 The county shall perform the following program support activities:
  - .11 Establish an effective system of preplacement preventive services for children through liaison with the courts, ~~and with~~ probation, law enforcement, and other public and private agencies.
    - .111 Such a system shall provide for cooperative working arrangements with other county and community agencies for receiving appropriate referrals, and for developing remedial resources for the protection of children. In the case of an Indian child cooperative arrangements can include tribes, tribal social service agencies and Indian organizations.
  - .12 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 361.7, 827, 10850, 16500, and 16501.1(f)(9) (~~as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997~~), Welfare and Institutions Code; ~~and~~ 45 CFR 1340.15(c)(2)(ii); and 25 USC 1912(d).

**Amend 31-040 to read:**

**31-040 PARTICIPANTS IN THE REVIEW**

**31-040**

.1 The following parties to the case under review shall be allowed to participate in the administrative review hearing:

.15 (Continued)

.16 The representative(s), as defined in Section 31-002(r)~~(3)~~(4).

.161 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Section 16503, Welfare and Institutions Code.

**Amend Section 31-066 to read:**

**31-066 MULTIDISCIPLINARY TEAM ASSESSMENT AND  
RECOMMENDATION FOR PLACEMENT IN  
OUT-OF-STATE GROUP HOME**

**31-066**

.2 For out-of-state group home placement purposes a "Multidisciplinary Team" means a team composed of county social services, county mental health, county probation, county superintendents of schools, and other members as determined by the county. With the addition of a county superintendent of schools member, a county's Interagency Placement Committee, as defined in Welfare and Institutions Code Section 4096, may also act as a county Multidisciplinary Team.

.21 In the case of an Indian child, pursuant to WIC Section 18964(b), the Multidisciplinary Team may permit a tribal social worker, or a representative of the child's tribe to attend team meetings and to provide relevant information about the child.

.211 In making a decision whether to place the Indian child in an out of state group home, information provided by the child's tribal social worker or tribal representative regarding the tribe's placement preferences shall be given serious consideration consistent with ICWA placement preferences and duties to engage in active efforts.

.3 (Continued)

.4 In assessing a child's need for an out-of-state placement, the multidisciplinary team shall consider, but is not limited to, a review of the current circumstances precipitating the request for an out-of-state placement, including a review of the reasonable efforts/services provided prior to the placement of the child in foster care or to make it possible for the child to return home, the services provided to prevent an out-of-home placement, the current location of the child and length of time there, situation and location of parents/siblings, descriptions of out-of-state placement resource(s) or type of placement resource being sought, the child's attitude toward placement, and the parents' attitude towards placement.

.41 (Continued)

.42 An assessment of the child shall include the ~~H~~history of the family including current functioning (education, employment, social and health).—~~Current~~ and the family's anticipated involvement with the child. In the case of an Indian child, the assessment shall include the current and anticipated involvement of the child's tribe with the child.

- .43 Permanent plan for the child; Documentation of other options available for the child's permanent placement (reunification, adoption, Tribal Customary Adoption, guardianship or preparation for independent living), anticipated duration of the proposed placement, and the relationship of the proposed placement to the permanent plan.

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~~.434~~ (Continued)

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.5 (Continued)

Authority Cited: Sections 10553, 10554, and 16501.1, Welfare and Institutions Code.

References: Sections 7901, 7911, 7911.1, and 7912, Family Code; and Sections 361.21, 361.31, 366.24, 727.1, and 16516.5, 18951, and 18964, Welfare and Institutions Code; 25 USC 1915.

**Amend Section 31-075 to read:**

**31-075 CASE RECORDS**

**31-075**

- .1 (Continued)
- .2 With the exception of an Indian child as stated below, case records shall be maintained at a minimum of three years in accordance with ~~Manual of Policies and Procedures Operations Manual~~ §section 23-353. The Department requires case records to be retained more than three years in certain circumstances such as, court orders, audits and/or federal mandates.

**HANDBOOK BEGINS HERE**

- ~~.21 The Department requires case records to be retained more than three years in certain circumstances such as, court orders, audits and/or federal mandates.~~

**HANDBOOK ENDS HERE**

- .21 For an Indian child, case records shall be maintained in perpetuity and made available at any time upon request of the Secretary of the Interior or the Indian child's tribe as required by 25 U.S.C. 1915 (e) and Welfare and Institutions Code section 361.31(k). Records and information regarding an Indian child must be entered into the Statewide Automated Child Welfare Information System.
- .3 Each record shall contain at least the following information:
- (a) A face sheet with identification information regarding the child; family; Indian ancestry, tribal membership or eligibility for tribal membership; and the placement services provider, if any.
  - (b) Documentation of ~~all~~ each ~~contacts~~-with the child, the child's family, an Indian tribe where there is reason to know that a child is or may be an Indian child, or any other individuals regarding the child or family. All contacts shall be documented including those made by a social worker employed by a Foster Family Agency, by a probation officer, tribal social services agency or by a social worker in another State performing the visits pursuant to the ICPC.
  - (c) Documentation of each contact identified and the results of an inquiry conducted as to whether the child is or may be an Indian child as set forth in Section 31-125.223. The documentation shall include a copy of the completed Judicial Council's Indian Child Inquiry Attachment ICWA-010(A) required by California Rules of Court, rule 5.481(a).

**HANDBOOK BEGINS HERE**

California Rules of Court rule 5.481(a) requires completion of the ICWA-010(A) in each case where a party is seeking a foster care placement of a child. The ICWA forms are available on the Judicial Council's website at <http://www.courts.ca.gov>.

**HANDBOOK ENDS HERE**

- (d) Copies of each Notice of Child Custody Proceeding for Indian Child (ICWA-030) must be sent to an Indian child's parent(s) or Indian custodian, if any, and the Indian child's tribe or the Secretary of the Interior. The case record shall include the registered or certified mail return receipt and each response, including documentation of all verbal communications, such as notes of conversations or meetings with tribal representatives, parent(s), guardian(s), or Indian custodian(s).

**HANDBOOK BEGINS HERE**

California Rules of Court, rule 5.481(b) requires use of the ICWA-030 to provide notice that a child custody proceeding under ICWA has been initiated. The ICWA forms are available on the Judicial Council's website at <http://www.courts.ca.gov>.

**HANDBOOK ENDS HERE**

- (e) In the case of an Indian child, documentation of the active efforts taken to identify and provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and whether these efforts proved unsuccessful and why as described in Section 31-135.23. This documentation must also be included in the case plan and court report.
- (f) In the case of an Indian child, documentation of the active efforts taken to comply with the ICWA placement preferences as described in Section 31-420.3 and whether these efforts proved unsuccessful at placing the Indian child according to ICWA placement preferences.

**HANDBOOK BEGINS HERE**

Welfare and Institutions Code section 361.31(k) states: "A record of each foster care placement or adoptive placement of an Indian child shall be maintained in perpetuity by the State Department of Social Services. The record shall document the active efforts to comply with the applicable order of preference specified in this Section."

**HANDBOOK ENDS HERE**

~~(e)~~(g)(Continued)

~~(d)~~(h)(Continued)

~~(e)~~(i) (Continued)

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~~(4)~~ (Continued)

**HANDBOOK ENDS HERE**

~~(f)~~ through ~~(t)~~ renumbered to (j) through (v) respectively (Continued)

~~(s)~~(w) When appropriate, the following forms or equivalent documentation, which have been approved by the Department:

(9) (Continued)

(10) For a Tribally Approved Home, documentation from the tribe, such as a tribal council resolution, a letter from the tribe's ICWA Committee or the tribe's Director of Social Service, confirming tribal approval of the home as meeting tribal standards for the purposes of foster or adoptive placement.

(A) Documentation that prior to placement of a child in a Tribally Approved Home, criminal record and child abuse registry background checks have been completed.

(B) If the tribe has a Tribal Child Welfare Agency that is authorized, pursuant to Welfare and Institutions Code section 10553.12, to receive criminal and child abuse registry information from the California documentation of the following:

1. The tribal agency's certification that it has completed caregiver background checks pursuant to the standards set forth in Sections 1522 and 1522.1 of the Health and Safety Code, with respect to any prospective foster parent, adoptive parent, or any adult who resides or is employed in the tribally approved home.

a. The certification must provide the address of the home, the names of the individuals in the household that have been cleared, the date of the completion of the clearance for each individual, and if any exemptions were granted.

2. Documentation that the Tribal Child Welfare Agency has agreed to report within 24 hours to the county social worker responsible for the child placed in the tribally approved home, any notification to the tribal agency by the Department of Justice, of a subsequent state or federal arrest or disposition notification involving an individual associated with the tribally approved home.

**HANDBOOK BEGINS HERE**

Tribes are not required to have a Title IV-E agreement in order for counties to be authorized to use Tribally Approved Homes for the placement of children under county care.

**HANDBOOK ENDS HERE**

(~~+~~)(x) (Continued)

(~~+~~)(y) (Continued)

(~~+~~)(z) Documentation of the review and the results of the child's potential for adoption, which shall specify why a child who is not reunified with his/her family is not appropriate for adoption as defined in Welfare and Institutions Code Sections 366.26(c)(1)(A) through (D). In the case of an Indian child, documentation shall also include the review results and documentation of concurrent planning including the solicitation of input from, and the results of discussions, with the Indian child's tribe regarding the potential for Tribal Customary Adoption as a permanency option for the Indian child.

Authority Cited: Sections 10553, 10554, 16002, and 16501, Welfare and Institutions Code and Assembly Bill 1695, Section 21, Chapter 653, Statutes of 2001.

Reference: Sections 224.2, 224.3, 309(d), 319, 361.2, 361.3, 361.31(k), 361.4, 361.5, 361.7, and 366.21 (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 366.26(c), 727, 10553.12, 11402, 16002, 16501, and Sections 309(d), 319, 361.2, 727, 11402, and 16507.5(b), (as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001), Welfare and Institutions Code; 45 CFR 1356.21(d); Sections 1505, 1522, and 1522.1, Health and Safety Code; and Sections 11105.08 and 11170(b), Penal Code; California Rules of Court, rules 5.481 and 5.690; 45 CFR 1355.20 and 1256.21(d); and 25 USC 1912, 1915, and 1931.

**Amend 31-101 to Read:**

**31-101 GENERAL**

**31-101**

.1 The county shall respond to all referrals for service which allege that a child is endangered by abuse, neglect, or exploitation.

.11 On all referrals, the county shall inquire whether the child is an Indian child and shall identify and document each response.

~~.11.12~~ (Continued)

.2 (Continued)

.5 Within 30 calendar days of the initial removal of the child or the in-person investigation, or by the date of the dispositional hearing, whichever comes first, the social worker shall:

.51 Determine whether child welfare services are necessary and:

.511 (Continued)

.512 In the case of an Indian child, if child welfare services are necessary, prepare, complete and implement the case plan in collaboration with the Indian child's tribe, or Indian service providers in accordance with the time frames and schedules specified in Chapter 31-210.

~~.512.513~~ (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3(a), 361.7, 11254, 16208, 16501(f), 16501.1, 16504, and 16504(d), Welfare and Institutions Code; California Rules of Court, rules 5.690(c) and 5.481(a); and, 25 USC 1912(d).

**Amend 31-105 to read:**

**31-105 EMERGENCY RESPONSE PROTOCOL**

**31-105**

.11 In order to be approved as a substitute for the Emergency Response Protocol form, the substitute shall at a minimum contain all of the following elements:

.111 The following identifying information:

(d) information regarding each adult in the household, which shall include:

(4) (Continued)

(5) Tribal affiliation,

~~(5)~~(6)(Continued)

~~(6)~~(7)(Continued)

~~(7)~~(8)(Continued)

(e) (Continued)

(f) information regarding each minor child in the family, which shall include:

(4) (Continued)

(5) Tribal affiliation,

~~(5)~~(6)(Continued)

~~(6)~~(7)(Continued)

~~(7)~~(8)(Continued)

~~(8)~~(9)(Continued)

.114 Information regarding the collateral contacts, including the following:

(c) Agency affiliation or person's relationship to the child, ~~and~~

(d) Contacts with tribe(s), Indian organizations, other Indian service providers, and

~~(d)~~(e)(Continued)

.116 The decision whether an in-person investigation is required, including the following outcome options.

(a) (Continued)

(b) Evaluate out, with a referral to an appropriate community agency; or

(1) Where there is reason to know that a child is or may be an Indian child, evaluate out with a referral as appropriate to the Indian child's tribe, an Indian organization or other Indian service provider; or

**HANDBOOK BEGINS HERE**

ICWA requires active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. It is therefore appropriate for the social worker when determining to evaluate out a call involving an Indian child, to identify culturally relevant community referrals that can help support the Indian family. Referrals can include known Indian service providers such as local tribes, tribal ICWA programs, or Tribal TANF programs that can assist in providing support to the family.

**HANDBOOK ENDS HERE**

(c) (Continued)

.117 When the decision is to evaluate out, either with or without a referral to another community agency, the following information shall be documented and included:

(a) (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3, 361.7, 16208 and 16504, Welfare and Institutions Code; California Rules of Court rule 5.690(c); and 25 USC 1912(d).

**Amend Section 31-110 to read:**

**31-110 IN-PERSON INVESTIGATIONS**

**31-110**

- .1 (Continued)
- .2 If the social worker determines that an in-person investigation is not necessary, but that the services of another community agency are appropriate, the social worker shall refer the reporter or child and family to that agency. In the case of an Indian child the social worker is authorized to refer the family to culturally appropriate services such as those available through the child's tribe, an Indian organization or other Indian service providers, etc.
- .21 (Continued)
- .3 If the social worker determines that an in-person investigation is necessary, the social worker shall make the in-person investigation immediately or within 10 calendar days, as appropriate.
- .31 If it is known, or there is reason to know, that the referral involves an Indian child that resides or is domiciled on an Indian reservation, Rancheria, or in an Indian community, the social worker shall contact the designated representative of the child's tribe so that active efforts to prevent the breakup of the Indian family can be commenced and coordinated.
- .32 Prior to temporary removal from the home where it is determined that such removal is necessary the social worker shall ask whether the child is or maybe an Indian.

**HANDBOOK BEGINS HERE**

Initial inquiry regarding Indian heritage is vital to beginning contact with the child's family and tribe, and complies with ICWA requirements to engage in active efforts to prevent the breakup of the Indian family. Further, asking such questions enables documentation of the worker's and county agency's attempts to collaborate with the tribe in early intervention and prevention of removal of the child from its community.

**HANDBOOK ENDS HERE**

- .4 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3, 361.7, 16208, 16501(f), and 16504, Welfare and Institutions Code.

**Amend Section 31-115 to read:**

- .1 The social worker shall conduct an in-person immediate investigation when:
  - .11 The emergency response protocol indicates the existence of a situation in which imminent danger to a child, such as physical pain, injury, disability, severe emotional harm or death, is likely.
  - .12 The law enforcement agency making the referral states that the child is at immediate risk of abuse, neglect or exploitation.
  - .13 The social worker determines that the child referred by a law enforcement agency is at immediate risk of abuse, neglect, or exploitation.
- .2 Prior to removal from the home, the social worker shall inquire whether the child is or may be an Indian child. If it is known, or there is reason to know that the referral involves an Indian child, the social worker shall contact the designated representative of the child's tribe, so that active efforts to prevent the breakup of the Indian family can be commenced and coordinated, unless there is imminent danger to the child and an in-person immediate removal is required.

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When a social worker is considering removal and making a foster care placement of an Indian child, the ICWA requires that they engage in active efforts to provide remedial, rehabilitative services to prevent the breakup of the Indian family. Such active efforts can include, but are not limited to contacting any known collaterals, family members, or known local tribes, Indian organizations, or other Indian service providers that can assist in providing support to the family.

**HANDBOOK ENDS HERE**

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3(a), 361.7, 16208, 16501(f), and 16504, Welfare and Institutions Code.

**Amend Section 31-120 to read:**

**31-120 IN-PERSON INVESTIGATION WITHIN 10 CALENDAR DAYS 31-120**

- .1 The social worker shall conduct an in-person investigation of the allegation of abuse, neglect, or exploitation within 10 calendar days after receipt of a referral when:
- .11 The emergency response protocol indicates that an in-person investigation is appropriate and the social worker has determined that an in-person immediate investigation is not appropriate.
  - .12 The law enforcement agency making the referral does not state that the child is at immediate risk of abuse, neglect, or exploitation and the social worker determines that an in-person immediate investigation is not appropriate.
- .2 If it is known or there is reason to know that the referral involves an Indian child, the social worker shall contact the designated representative of the child's tribe so that active efforts to prevent the breakup of the Indian family can be commenced and coordinated with the tribe.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3(c), 361.7, 16208, 16501(f), and 16504, Welfare and Institutions Code.

Amend section 31-125 to read:

**31-125 INVESTIGATION REQUIREMENTS**

**31-125**

.2 (Continued)

.22 If as a result of the investigation the social worker does not find the referral to be unfounded, the social worker shall:

.221 (Continued)

.222 Make necessary collateral contacts with each persons having knowledge of the condition of ~~the children~~ each child that is the subject of an allegation, including tribes, Indian organizations, or other Indian service providers when the child is or may be Indian.

.223 In all cases the social workers shall inquire of the child, if the child is old enough, the child's parent(s), legal guardian(s), or the child's Indian custodian, whether the child is or may be an Indian child and complete the Judicial Council Indian Child Inquiry Attachment form ICWA-010(A). Social workers have an affirmative and continuing duty to inquire about a child's Indian status.

(a) Circumstances that may give rise to a further duty to inquire include, but are not limited to, the following:

(1) Information is provided by the child, parent or Indian custodian, an officer of the court, a tribe, an Indian organization, a public or private agency, or an extended family member suggesting the child may be Indian;

(2) Information is provided that one or more of the child's biological parent(s), grandparent(s), or great-grandparent(s) are or were a member of a tribe;

(3) The residence or domicile of the child, or the child's parent(s), guardian(s), or Indian custodian(s) is in a predominantly Indian community; or

(4) The child or the child's family has received services or benefits available to Indians from a tribe or from the federal government, such as Indian Health Services.

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California Rules of Court, rule 5.481(a)(1) requires completion of the ICWA-010(A) for inquiry documentation. ICWA forms are available on the Judicial council's website at <http://www.courts.ca.gov>.

**HANDBOOK ENDS HERE**

.224 If the results of the inquiry indicate that the child is, or may be, an Indian child and a petition for removal pursuant to Welfare and Institutions Code section 313 is filed, the social worker must complete and comply with the notice requirements of Section 31-125.7.

.225 If the results of the inquiry indicate that the child is, or may be, an Indian child except that the child's tribe is a non-federally recognized tribe, and a petition for removal pursuant to Welfare and Institutions Code section 313 is filed, the social worker is authorized to inform the tribe that the tribe may seek permission to participate in the child's dependency case at the discretion of the court, pursuant to Section 306.6 of the Welfare and Institutions Code.

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Welfare and Institutions Code section 306.6(b) provides, as it pertains to non-federally recognized tribes:

"(b) If the court permits a tribe to participate in a proceeding, the tribe may do all of the following, upon consent of the court:

- (1) Be present at the hearing.
- (2) Address the court.
- (3) Request and receive notice of hearings.
- (4) Request to examine court documents relating to the proceeding.
- (5) Present information to the court that is relevant to the proceeding.
- (6) Submit written reports and recommendations to the court.
- (7) Perform other duties and responsibilities as requested or approved by the court."

**HANDBOOK ENDS HERE**

.5 (Continued)

.51 Perform the requirements specified in Chapter 31-200.

~~.511 If a dependency petition is to be filed and it is determined that the child is or may be an Indian child, the social worker shall follow the procedures in Section 31-515.~~

.6 If as a result of the inquiry required in Section 31-125.223 the social worker knows or has reason to know that the child is or may be an Indian child, and a dependency petition is filed, the social worker shall provide a copy of and explain the Parental Notification of Indian Status form (ICWA-020) to the parent(s), Indian custodian or guardian, if any, and ask that the form be completed.

### **HANDBOOK BEGINS HERE**

California Rule of Court, rule 5.481(a)(2) requires completion of the ICWA-020. Pursuant to this rule, the court may also order the county to use reasonable diligence to locate and ask a parent, Indian custodian, or guardian to complete the form if the parent, Indian custodian, or guardian does not personally appear at a hearing. ICWA forms are available on the Judicial Council's website at <http://www.courts.ca.gov>.

### **HANDBOOK ENDS HERE**

.7 If, as a result of the inquiry required in Section 31-125.223, the social worker knows or has reason to know that the child is or may be an Indian child and a dependency petition is filed, notice of the proceeding(s) shall be sent to the child's parent, guardian, or Indian custodian, if any, and the tribe or tribes with whom the child is a member or eligible for membership or potential affiliation.

.71 Notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended but not required. However, this could help support active efforts.

.72 Notice to a tribe shall be sent to its tribal chairperson unless the tribe has designated another tribal agent that is included and published on the Department of the Interior, Bureau of Indian Affairs (BIAs) list of "Indian Child Welfare Act Designated Tribal Agents for Service of Notice." If an agent has been designated by a tribe, it is mandatory that the notice be sent to the agent.

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The ICWA provides that Indian tribes may designate an agent other than the tribal chair for service of notice of proceedings under the ICWA. The BIA list of designated tribal agents for service of ICWA notice can be found at: <http://www.bia.gov/cs/groups/public/documents/text/idc012540.pdf>. Always check for the most current publication of the BIA list as it is generally updated on an annual basis.

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- .73 Notice shall also be sent directly to the Secretary of the Interior and to the Bureau of Indian Affairs, Sacramento Area Director regardless of whether the identity or location of the parent/guardian/Indian custodian or the child's tribe is known or unknown. Notices shall be sent to the following two addresses:

Secretary of the Interior  
Bureau of Indian Affairs, Sacramento Area Director  
2800 Cottage Way  
Sacramento, CA 95825; and,

Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240.

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California expanded the ICWA notice requirements to include sending a copy directly to the Secretary of the Interior even where the tribe is known.

Welfare and Institutions Code section 224.2(a)(4) states:

"If the identity or location of the parents, Indian custodians, or the minor's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior, unless the Secretary of the Interior has waived the notice in writing and the person responsible for giving notice under this section has filed proof of the waiver with the court."

**HANDBOOK ENDS HERE**

- .731 Notice shall be sent using the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030).

.732 Notice shall continue to be sent regarding each hearing to each tribe in which an Indian child may be a member or eligible for membership.

(a) Once a tribe has acknowledged a child is a member or eligible for membership or has intervened in the proceeding, subsequent notices of the proceedings only need to be sent to the child's tribe and no longer need to include the ancestral information, a copy of the petition in the proceeding, a copy of the child's birth certificate, or the statement of rights.

.74 Each notice sent, its return receipt, and each response received shall be maintained and a copy of each filed with the court.

.75 Notice must be sent in a manner to ensure an Indian child's parent or legal guardian or Indian custodian, if any, and the tribe receive the notice at least 10 days prior to the hearing date. Upon request an additional 20 days will be granted. Notice prior to detention hearing must be sent as soon as possible after the filing of a petition and proof of notice filed within 10 days after filing the petition.

#### **HANDBOOK BEGINS HERE**

Welfare and Institutions Code Section 224.2(d) provides, in part, that with the exception of a detention hearing, the parent, Indian custodian, or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding.

#### **HANDBOOK ENDS HERE**

.76 If at the time of the dependency court appearance, no determination of tribal standing is made by the tribe or there has been no response from the tribe regarding the child's status as an Indian child, as defined by the ICWA, the social worker shall:

.761 Advise the court of all information which indicates that the child may be an Indian child.

.762 Advise the court of all efforts made to establish the child's status as an Indian child.

.763 Request direction from the court on how to proceed with the dependency action.

.764 Continue contacts with the tribe and the BIA until the question of the child's status as an Indian child, as defined by the ICWA, has been resolved and the resolution is documented in the case record for future reference.

.765 If after notice has been provided and neither the tribe nor the BIA has provided a determinative response within 60 days after receiving that notice, then the court may determine that the ICWA does not apply to the proceedings, provided that the court must reverse its determination of the inapplicability of the act and must apply it prospectively if a tribe or the BIA subsequently confirms that the child is an Indian child.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.2, 224.2(d), 224.3, 300, 306.6, 361.7, 16504, 16509, and 16509.1, Welfare and Institutions Code; Section 11165.12, Penal Code; ~~and~~ 25 USCA ~~Section~~ 1901 et seq.; and California Rules of Court, rule 5.481.

**Amend Section 31-135 to read:**

**31-135 AUTHORITY FOR REMOVAL OF CHILD**

**31-135**

- .1 When the social worker determines that the child cannot be safely maintained in his/her own home, the social worker shall ensure that authority to remove the child exists prior to removal.
  - .11 If removal is voluntary, such authority shall be a the written consent of the parent/guardian/Indian custodian.
  - .12 (Continued)
    - .121 If a determination has been made in accordance with Welfare and Institutions Code Section 308 that the minor or his/her foster family would be endangered or his/her custody would be disturbed by the disclosure to the parent(s)/guardian(s)/Indian custodian of the minor's exact whereabouts, the social worker shall notify immediately the parent(s)/guardian(s)/Indian custodian either in person or by telephone of his/her right to apply for judicial review of that determination within 24 hours.
      - (a) If the social worker fails to notify the parent(s)/guardian(s)/Indian custodian(s) as specified in Section 31-135.121, the social worker shall document in the case record the reason(s) for failure to do so. Where an Indian child is or may be involved the social worker shall evaluate the placement for whether it is no longer voluntary, thus triggering Indian child custody proceeding requirements under ICWA, such as inquiry, noticing and placement preferences.
    - .122 If the child is an Indian child, involuntary removal must be supported by clear and convincing evidence that the continued custody of the child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the child. The determination on emotional or physical damage to the child must be supported in court by the testimony of a qualified expert witness.
- .2 The social worker shall document in the case record ~~any~~ all preplacement preventive efforts made and services provided.
  - .21 (Continued)
  - .22 (Continued)
  - .23 In the case of an Indian child, pre-placement preventive efforts shall include active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to the removal of a child from the family.

.231 Active efforts prior to removal shall include but not be limited to the following efforts to:

- (a) Identify the child's Indian heritage in the assessment process.
- (b) Take into account the prevailing social and cultural standards, and way of life of the Indian child's tribe.
- (c) Utilize tribal resources to support preplacement preventive efforts, including resources available from the child's extended family, tribe, tribally based family preservation and reunification or other services when available; and non-Indian resources when tribal resources are not available.

### **HANDBOOK BEGINS HERE**

Examples of active efforts include, but are not limited to, the following:

- (1) Notifying and requesting involvement of the tribe through a designated tribal representative to participate in the case at the earliest point possible.
- (2) Facilitating identification of tribal services, such as financial assistance, food, housing, health care, mental health treatment, substance abuse prevention & treatment, parenting classes, and transportation. For example, local Tribal TANF agencies may be able to provide necessary supports to family to prevent the breakup of the Indian family.
- (3) Conferring with the tribe about the availability of tribal support for the family, including traditional practices, as well as other tribal services.
- (4) Conferring with extended family members for help and guidance, including feedback on continued retention of contact between the family and the child, using them as a resource for the child.
- (5) Providing services to extended family members to allow them to be considered for placement if out-of-home care becomes necessary.
- (6) Integrating tribal social workers into multidisciplinary teams pursuant to Welfare and Institutions Code sections 18951(d)(4) and 18964.
- (7) Request the child's tribe's participation in the multidisciplinary team as provided under Welfare and Institutions Code section 18951.

### **HANDBOOK ENDS HERE**

.233 The social worker shall document in the Indian child's case files the active efforts to prevent the removal of the child. If the determination is to remove the child, the social worker must document that the active efforts proved unsuccessful and the reasons why.

.234 When it comes to the attention of the social worker that an Indian child who has been removed from the custody of his or her parent(s), or Indian custodian(s), is already a ward of the child's tribe or subject to the exclusive jurisdiction of the child's tribe, the social worker shall notify the tribe of the removal, pursuant to Welfare and Institutions Code section 305.5(a), no later than the next working day following the removal. The social worker shall do the following:

(a) Notify the child's tribe in writing that the child has been taken into protective custody, that a petition pursuant to Welfare and Institutions Code section 313 is pending or has been filed, and that the county has reason to believe the child is a ward of the tribe or subject to the tribe's exclusive jurisdiction. The notice shall:

(1) Provide the child's name, date of birth, name of parent or Indian custodian, and the date of removal.

(2) Request that the tribe confirm if the child is a ward of its tribal court or under its exclusive jurisdiction.

(3) Inform the tribe that upon receipt of written confirmation that the child is a ward or under the tribe's exclusive jurisdiction, a request shall be made to the juvenile court for an order to transfer the child custody proceeding to the tribe pursuant to Welfare and Institutions Code sections 381 and 305.5.

(4) Inform the tribe that additional information regarding the circumstances that created the reason for the removal of the child may be requested by the tribe, along with information necessary to confirm the child's status with the tribe.

(b) The notice shall be sent via facsimile or secure mail addressed to the tribal chair or the ICWA designated agent for service. If communication by secure email or facsimile is not available, then notice shall be sent via overnight delivery. In addition, contact with the tribe shall be made by telephone to inform the tribe of the child's removal.

- (c) Upon written confirmation of the child's status as a ward of the tribe or as subject to its exclusive jurisdiction, the social worker shall initiate before the juvenile court a petition to transfer pursuant to Welfare and Institutions Code section 305.5(a) and seek a determination pursuant to Welfare and Institutions Code section 381.
- (d) When the order to transfer the child custody proceeding to the tribe is issued, the social worker shall within 24 hours make arrangements for the safe physical transfer of the child, release the child's entire case file for the current episode, to the tribe subject to the tribe's agreement to maintain the documentation confidential consistent with state and federal law.
- (e) The social worker shall document each communication with the tribe regarding the notification of the removal, the final outcome and shall retain a copy of the entire case upon transfer of the child.

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Welfare and Institutions Code sections 305.5 and 381(c) provide for expedited review of transfer petitions and are to have precedence over all actions and civil proceedings not specifically given such precedence, and are to be heard at the earliest possible moment.

**HANDBOOK ENDS HERE**

- .3 If the child is in out-of-home placement following a voluntary removal, and the social worker determines that continued out-of-home placement is necessary for the child's protection, the county shall implement a voluntary placement agreement as specified in Section 31-430.31.

.31 A voluntary removal of an Indian child shall comply with the consent requirements for Indian children that are set forth in Section 31-430.

- .4 If the child is in temporary custody following an involuntary removal, and the social worker determines that continued detention is necessary for the child's protection, the social worker shall take the following action:

.41 (Continued)

**HANDBOOK BEGINS HERE**

.411 (Continued)

**HANDBOOK ENDS HERE**

.42 If the child is an Indian child, involuntary removal from the parent or Indian custodian or placement out of the home must be supported by clear and convincing evidence that the continued custody of the child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the child. The determination of emotional or physical damage to the child must be supported in court by the testimony of a qualified expert witness.

### **HANDBOOK BEGINS HERE**

The Welfare and Institutions Code sections 224.6(c) and (d) provide:

"(c) Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:

- (1) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.
- (2) Any expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.
- (3) A professional person having substantial education and experience in the area of his or her specialty.

(d) The court or any party may request the assistance of the Indian child's tribe or Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses."

### **HANDBOOK ENDS HERE**

.43 Consider the prevailing social and cultural standards and way of life of the Indian child's tribe, including that tribe's family organization and childrearing practices.

.44 The social worker may request the assistance of the Indian child's tribe or the BIA agency serving the Indian child's tribe, in locating persons qualified to serve as an expert witness.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3, 224.6, 224.6(d), 305, 305.5, 306, and 308 (as amended by Assembly Bill 4122, Chapter 320, Statutes of 1990); 361.7, 381, and 16507.4, Welfare and Institutions Code; and 25 USC 1903(6), 1911, 1912, 1913(a), and 1915.

Adopt Section 31-136 to read:

**31-136**      **TRANSFER OF AN INDIAN CHILD**

**31-136**

.1      **Transfer of An Indian Child to A Tribe:** In the case of an Indian child under state court jurisdiction, where a petition is granted to transfer the case to a tribe the following shall apply:

.11      In all cases where a child is being transferred, the social worker shall ensure the physical transfer of the child, without undue delay, to the designated representative of the child's tribe or tribal program. The physical transfer of the Indian child to his or her tribe must be made consistent with local child welfare protocols that are mutually agreed upon between a county and a tribe, where such protocols exist.

.12      Where the transfer is not to a Tribal Title IV-E Agency pursuant to the juvenile court's order of transfer, the entire case file shall be provided to the tribe subject to the tribe's agreement to maintain the confidentiality of the documentation consistent with state and federal law. A copy of the file shall be retained by the child welfare agency.

.2      **Transfer to Tribal Title IV-E Agency:** Pursuant to 45 CFR 1356.67, in order to preserve the child's eligibility for federal Title IV-E AFDC-FC benefits, the following shall apply when an Indian child is being transferred from county jurisdiction to a Tribal Title IV-E Agency:

.21      The social worker shall transfer the child in a manner that does not affect the child's eligibility for or payment of, Title IV-E or other federal benefits, including medical assistance under Title XIX.

.22      Prior to transfer of the child, the child's Title IV-E eligibility determination must be completed, and all documentation related to that determination, shall be provided to the Tribal Title IV-E Agency.

.23      The entire case file for the child's current foster care episode shall be provided to the Tribal Title IV-E Agency. The child welfare agency shall retain a copy of the documents provided upon transfer.

.24      Essential documents that must be provided upon transfer are the following:

.241      All judicial determinations that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts have been made to prevent or eliminate the need for removal of the child.

.242      Documentation that relates to the child's Title IV-E eligibility, including the following, as applicable:

- (a) Foster Care Form 3 (FC3) "Determination of Federal Aid to Families with Dependent Children (AFDC) Foster Care Eligibility".
- (b) Adoption Assistance Form 4 "Eligibility Certification Adoption Assistance Program" (AAP4).
- (c) Kinship Guardianship "Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance payment (KinGAP)" (KG2).

.243 Documentation pertaining to the child's eligibility for other federal benefits including Medicaid programs under Title XIX, Social Security Disability or other federal benefits.

.244 The most recent provider's license or approval including background check documentation verifying clearances for all adults in the caregiver's household and complaint information.

**HANDBOOK BEGINS HERE**

Two California tribes have entered into a Title IV-E agreement with the CDSS. In addition, there are tribes in other states that have entered into Title IV-E agreements with their states or directly with the Federal Administration on Children and Families. To the extent available, a list of IV-E tribal programs can be found on the CDSS ICWA website at: <http://www.childsworld.ca.gov/PG1322.htm>.

**HANDBOOK ENDS HERE**

**.3 Transfer of a Ward of A Tribal Court or An Exclusive Jurisdiction Tribe:**

.31 Where the social worker is informed that an Indian child that has been taken into temporary protective custody is already a ward of a tribal court or is from an exclusive jurisdiction tribe, the social worker shall, no later than the next working day, seek written confirmation of the child's status from the tribe by providing notice as specified in Section 31-135.2334.

.32 Upon written confirmation of the child's status as a ward of the tribe or subject to its exclusive jurisdiction, the social worker, shall expeditiously initiate a petition for the transfer of the child custody proceeding pursuant to Welfare and Institutions Code sections 305.5(a) and 381(a).

.33 When the court order to transfer the child custody proceeding to the tribe is issued, the social worker shall within 24 hours make arrangements for the safe physical transfer of the child, and release the child's entire case file for the current episode, to the tribe subject to the tribe's agreement to maintain confidentiality of the

documentation consistent with state and federal law. The child welfare agency shall retain a copy of the documents provided to the tribe upon transfer.

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Welfare and Institutions Code section 305.5(a) provides:

"(a) If an Indian child, who is a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings as recognized in Section 1911 of Title 25 of the United States Code or reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, has been removed by a state or local authority from the custody of his or her parents or Indian custodian, the state or local authority shall provide notice of the removal to the tribe no later than the next working day following the removal and shall provide all relevant documentation to the tribe regarding the removal and the child's identity. If the tribe determines that the child is an Indian child, the state or local authority shall transfer the child custody proceeding to the tribe within 24 hours after receipt of written notice from the tribe of that determination."

Questions regarding exclusive jurisdiction tribes or other issues related to transfers, contact the CDSS ICWA staff at:

Email: [ICWA@dss.ca.gov](mailto:ICWA@dss.ca.gov)  
California Department of Social Services  
Children and Family Services Division  
744 P Street  
Sacramento, CA 95814  
(916) 657-2614

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Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 305.5, 381, 827.15, and 10553.1 Welfare and Institutions Code; 25 USC 1911, 1918, and 1919; 42 USC 670, 679c et seq.; 45 CFR 1357.67; and PL 110-351.

**Amend Section 31-201 to read:**

**31-201 ASSESSMENT AND CASE PLANNING PROCESS**

**31-201**

.1 (Continued)

.11 (Continued)

.111 An assessment is completed for each child for whom child welfare services are to be provided, and includes gathering and evaluating information relevant to the case situation and appraising case service needs.

(a) In the case of an Indian child, the assessment shall include active efforts as specified in Sections 31-135.23 and 31-420.3. The assessment shall include information received from the child's tribe, the child's extended family and Indian service providers regarding the resources available to the child and the family. Additionally, in appraising the case service needs the social worker shall consider the child's tribe placement and permanency preferences when removal is necessary.

.12 (Continued)

.121 When determining the case plan goal, the social worker shall consider the following order of priority for services:

(a) Family maintenance services - In order to maintain the child in his/her own home, when the protective needs of the child can be met. In the case of an Indian child, family maintenance services shall include active efforts as described in Section 31-135.23.

(b) Family reunification services - If the family potentially can be successfully reunified within the time limits specified in Welfare and Institutions Code Sections 16507 and 16507.3. In the case of an Indian child, family reunification services shall include active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family as described in Section 31-135.23. If the child is placed out of home and is receiving family reunification services, the case plan shall have two tracks:

(1) (Continued)

(2) (Continued)

(c) Permanent placement services – Only when there are no feasible means of maintaining or reuniting the child with his/her parent(s)/guardian(s).

- (1) (Continued)
- (2) (Continued)
- (3) When recommending ~~a~~ permanent placement services, the social worker shall adhere to the following order of priority for permanent placement:
  - (A) Adoption – Before the social worker recommends to the court that family reunification services be terminated, a case review conducted jointly by foster care and adoption staff to determine potential for adoption shall have been completed.
    1. (Continued)
    2. If the case review is to address a potential adoption of an Indian child, the following shall also apply when evaluating the child’s permanency alternatives:
      - a. In any pre-adoptive or adoptive placement of an Indian child, preference shall be given, in the absence of good cause to the contrary, in descending priority order to placement with:
        - (i) A member of the Indian child's extended family which shall be defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
        - (ii) Other members of the child’s tribe;
        - (iii) Another Indian family;
        - (iv) If a different order has been established by the tribe, the order preferred by the tribe so long as the placement is in the least restrictive setting appropriate for the child;

- (v) When no preferred placement is available, active efforts shall be made to place the child with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe.
- 3. If the permanent placement may lead to the termination of parental rights of the Indian child's parent, the social worker must consider that no termination may be ordered in such proceeding in the absence of a determination, which will have to be supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Evidence must also be presented that active efforts have been made designed to prevent the breakup of the Indian family and that the efforts proved unsuccessful.
- 4. Before the social worker recommends termination of parental rights, the review shall evaluate whether the termination of parental rights would substantially interfere with the child's connection to his or her tribal community, or tribal membership.
- 5. The review shall evaluate whether there is another planned permanent living arrangement for the child that does not require termination of parental rights but that nonetheless provides the child with permanency.
- 6. The review shall evaluate, after soliciting input and consulting with the child's tribe, whether a Tribal Customary Adoption is a potential option for the child pursuant to Welfare and Institutions Code Section 366.24.
- 7. If the tribe elects to consider Tribal Customary Adoption for the child, the social worker shall collaborate with the tribe in meeting the requirements set forth in Welfare and Institutions Code Section 366.24.

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The Indian child's tribe is the only entity that can elect Tribal Customary Adoption as the permanency option for the child. The tribe may express a preference for a different option. [Welfare and Institutions Code section 366.26(c)(1)(B)(vi)(II)]. No tribe is required to elect Tribal Customary Adoption.

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~~2.8.~~ (Continued)

(B) (Continued)

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~~4.~~ (Continued)

~~2.~~ (Continued)

**HANDBOOK ENDS HERE**

(C) (Continued)

.13 (Continued)

.133 Case management activities to be performed.

- (a) Parent(s)/guardian(s) shall be requested to participate in the development of the case plan. In the case of an Indian child, the child's tribe, tribal advocate or Indian custodian, if the child has one, shall also be requested to participate in the development of the case plan.
- (b) (Continued)

Authority Cited: Sections 10553, 10554, and 11369, Welfare and Institutions Code.

Reference: Sections 224.6, 358.1(e), and 361~~(as added by Assembly Bill 1544, Chapter 793, Statutes of 1997), 361.5, 361.7, 361.31, 366.23, 366.24, 366.26, 366.26(c)(1)(B)(vi)(II), 366.26(e)(2), 16501, 16501.1~~ ~~(as added by Assembly Bill 1544, Chapter 793, Statutes of 1997), 16501.1(f), 16506, 16507, and 16508, Welfare and Institutions Code; Sections 8714.5 and 8714.7~~ ~~(as added by Assembly Bill 1544, Chapter 793, Statutes of 1997), Family Code; California Rules of Court; rule 5.690(c); and 25 USC 1912 and 1915.~~

**Amend Section 31-205 to read:**

**31-205 ASSESSMENT DOCUMENTATION**

**31-205**

.1 The social worker shall document the following assessment information:

~~(a).~~11 The relevant social, cultural, and physical factors relating to the following:

~~(1).~~111 The child.

(a) In the case of an Indian child, the social worker shall assess and document the prevailing social and cultural standards and way of life of the Indian child's tribe, including family organization and child-rearing practices.

~~(2).~~112 The child's parent(s)/guardian(s), Indian custodian(s) or person(s) serving in that role.

~~(3).~~113 (Continued)

~~(b).~~12 (Continued)

~~(e).~~13 Whether the child may safely remain at home if preplacement preventive services are provided, and, if so, the specific services to be provided.

.131 In the case of an Indian child, the social worker shall document the pre-placement preventive services that comprise the active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family as described in Section 31-135.23 that have been or will be provided.

~~(d).~~14 (Continued)

~~(e).~~15 (Continued)

~~(f).~~16 Any known social services previously offered and/or delivered to the child or family and the result of those services.

.161 In the case of an Indian child, all known social services previously offered and/or delivered to the child or family including those provided as active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, as required by Section 31-135.23, and the results of those efforts.

~~(g).~~17 If family reunification services are recommended, relatives or others who could provide or assist with legal permanency - adoption, guardianship, or preparation for independence - should family reunification fail.

.171 In the case of an Indian child, if family reunification services are recommended, ICWA requires the inclusion of relatives and extended family members, tribal representatives, other Indian social service agencies and individual Indian caregivers who can provide or assist with legal permanency should family reunification fail. Documentation shall include concurrent planning discussions with the child's tribe including solicitation of input and the result of consultation regarding Tribal Customary Adoption as an option for the child, should reunification fail.

~~(h).~~18 (Continued)

~~(i).~~19 (Continued)

~~(j).~~20 Continued)

.2 (Continued)

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.6, 361, 361.31, 361.5, 361.7, 366.24, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, 11467.1, 16501, 16501(e), 16501.1(e)(9), and 16507, Welfare and Institutions Code; ~~42 U.S.C.—Sections 675(1) and 677;~~ and Sections 1502 and 1502(a)(8), Health and Safety Code; and 25 USC 1912 and 1915.

**Amend Section 31-206 to read:**

**31-206 CASE PLAN DOCUMENTATION**

**31-206**

.221 The social worker shall include specific descriptions of the responsibilities of the social worker, other county staff, other individuals, and community agencies in the provision of services and the performance of case management activities.

(a) In the case of an Indian child, the social worker shall include a description of the specific services available and being provided to the child by the tribe, the Indian caregiver, other Indian service agencies or Indian organizations.

.222 For children in out-of-home care, the social worker shall document the two services tracks identified for children receiving family reunification services.

(a) The services to be provided to assist the parents(s), guardian or Indian custodian in reunifying with the child as identified in the family reunification services track. In the case of an Indian child, the social worker shall also document active efforts to prevent the breakup of the Indian family as required by Section 31-135.23.

(b) The services to be provided and steps to be taken to implement the permanency alternative identified in the case plan if family reunification fails.

(1) In the case of an Indian child, the social worker shall document the services to be provided and the steps to be taken to implement the permanency alternative, including, in the case of an Indian child, Tribal Customary Adoption, identified in the case plan, if family reunification fails. Permanent placement may only occur if there is evidence beyond a reasonable doubt that is supported by the testimony of a qualified expert witness as required by Section 31-135.5 that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The social worker shall also document compliance with the standards required by Section 31-201.121(c)(3)(A)2.

.23 (Continued)

.3 For children receiving out-of-home care, the social worker shall also document in the case plan, the following:

.31 An assessment of the child's placement needs and a determination and description of the type of home or institution which will best meet those needs.

.311 In the case of an Indian child, if an out-of-home placement is not made consistent with the placement preference standards specified in Section 31-420.3 the social worker shall document what active efforts were made to place the child in accord with the ICWA placement preferences and reasons why this did not occur.

.312 The prevailing social and cultural standards of the Indian community in which the parent or extended family members reside or maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied.

(a) Whether preference shall be given to the child's placement with one of the placement preferences defined in ICWA at 25 U.S.C. 1912(e). The ICWA placement preferences can be found at the following link: <http://www.childsworld.dss.ca.gov/>

(b) Whether Tribal placement preferences were followed as required by the ICWA at 25 U.S.C. 1912(e), and if not, documentation that there was good cause to deviate, as specified in ICWA.

~~.311~~.313 (Continued)

~~.312~~.314 (Continued)

~~.313~~.315 (Continued)

~~.314~~.316 (Continued)

~~.315~~.317 (Continued)

~~.316~~.318 (Continued)

.32 (Continued)

Authority Cited: Sections 10553, 10554, and 16501.1, Welfare and Institutions Code; and Section 17552, Family Code; and Public Law 109-288.

Reference: Sections 224.6, 224.6(b)(2), 358.1(e), 361, 361(b), 361.31, 361.31(k), 361.5, 361.7, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, 16002, 16501, 16501.1(e), and 16507 Welfare and Institutions Code; 25 USC 1912(e); 42 U.S.C.—Sections 675(1) and 677; Sections 7901, 7911, 7911.1, 7912, and 17552, Family Code; and Sections 1502 and 1502(a)(8), Health and Safety Code; and Public Law 109-288.

**Amend Section 31-310 to read:**

**31-310 SOCIAL WORKER RESPONSIBILITIES FOR SERVICE DELIVERY 31-310**

.13 When a child's family is being provided services in order to maintain the child in the home, take action as necessary to ensure that the child's protective needs continue to be met.

.131 In the case of an Indian child, the services to maintain the child in the home must be provided in accordance with the requirement to engage in active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family as further specified in Section 31-135.23. This standard requires additional efforts on the part of the social worker to work with the child's family and tribe to identify and utilize tribally based resources that may be available to the family, such as tribal and other Indian social service agencies and organizations.

.14 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 361.2, 361.7, 10850, and 16501.1, Welfare and Institutions Code; and Section 19, Penal Code.

**Amend Section 31-315 to read:**

**31-315 SERVICE-FUNDED ACTIVITIES**

**31-315**

.1 Service-funded activities shall be available to children and their families in all phases of the Child Welfare Services program as specifically identified in the child's case plan.

.11 In the case of an Indian child, social workers shall seek and make available to Indian children and their families service-funded activities that reflect the unique values of the Indian culture and promote the stability and security of Indian children, Indian families and Indian communities. Sources of such services may be found in the Indian child's tribe, Indian organizations, Tribal TANF programs, and other Indian organizations. ICWA requires documentation when efforts to provide these services prove unsuccessful.

.2 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 16501(a)(1) and (2), and 16501(b), Welfare and Institutions Code; and 25 USC 1912(a) and (d).

Amend 31-335 to read:

**31-335 SOCIAL WORKER CONTACTS WITH OTHER SERVICE PROVIDERS**

**31-335**

.1 The social worker shall have contact with other professionals working with the child, parents/guardians, Indian Custodians and the out-of-home care provider including, but not limited to, the following: (Continued)

.16 Social Workers from other counties or states providing services-

.17 In the case of an Indian child, social workers must establish and maintain contact with representatives from the child's tribe, other Indian social service agencies, Indian agencies, Indian organizations or individual Indian service providers that assist Indian children and families.

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~~.2~~ The purpose of social worker contact with other professionals is to achieve the following objectives:

~~.21~~. (Continued)

~~.22~~. (Continued)

~~.23~~. (Continued)

~~.24~~. (Continued)

5. Document "active efforts" in cases involving Indian child(ren).

**HANDBOOK ENDS HERE**

~~.3.2~~ The social worker shall request written reports from the professionals specified in Section 31-335.1, when their services are being provided to a child, parent/guardian/Indian custodian, or the out-of-home care provider as part of a case plan.

**HANDBOOK BEGINS HERE**

Examples of other service providers that often work with an Indian child and family include: a tribal ICWA advocate, a tribal designated representative, a tribal spiritual leader, a Tribal TANF program, Indian Health Services, an Indian education program, or a non-tribal community agency.

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~~31.21~~ (Continued)

~~311.211~~ (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 361.3, 361.31, 361.7, 16501.1(f)–(4), (5), and (6), Welfare and Institutions Code; and 25 USC 1912 and 1913.

**Amend Section 31-405 to read:**

**31-405 SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT**

**31-405**

.1 When arranging for a child's placement the social worker shall:

~~(a).~~11 (Continued)

~~(b).~~12 Give preferential consideration for placement of the child to an adult who is a grandparent, aunt, uncle or sibling of the child.

.121 In the case of an Indian child the first preference shall be placement with a member of the child's extended family, as defined in Section 1903(2), of 25 U.S.C. and if an extended family member is not available, then placement preference standards as set forth in Section 31-420.3 shall be followed.

~~(4).~~122 (Continued)

~~(2).~~123 (Continued)

**HANDBOOK BEGINS HERE**

The ICWA Section 1903(2) provides that "an Indian child's extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

**HANDBOOK ENDS HERE**

~~(e).~~13 Consider relatives identified by the social worker as willing and appropriate to care for the child if no non-custodial parent or relative given preferential consideration is available.

.131 In the case of an Indian child, active efforts shall be made to comply with ICWA placement preferences as required by Section 31-420.3 for foster care placement.

(a) Consider the placement preferences of the child's tribe.

(b) Consider the Tribally Specified Home designated as the preference of the Indian child's tribe.

(c) If adoption of the child is being considered the social worker shall take into account the ICWA preferences for placement, which absent good cause to the contrary, should be to a placement with:

(1) A member of the child's extended family

(2) Other members of the Indian Tribe or

(3) Other Indian families.

~~(4).~~132 (Continued)

~~(2).~~133 (Continued)

~~(4).~~14 (Continued)

~~(4).~~141 (Continued)

~~(e).~~15 (Continued)

.16 When considering the placement of an Indian child in a Tribally Approved Home, the following requirements shall apply:

.161 The social worker must conduct the caregiver background checks on all adults (over age 18) living in the home or persons that may have significant contact with the child unless the tribe has an authorized Tribal Child Welfare Agency that conducts the caregiver background checks pursuant to Welfare and Institutions Code section 10553.12.

.162 If the tribe has a Tribal Child Welfare Agency that is approved to receive criminal and child abuse registry information from the California Department of Justice pursuant to Welfare and Institutions Code section 10553.12 the social worker shall secure documentation of the following:

(a) The Tribal Child Welfare Agency's certification that it has completed caregiver background checks pursuant to the standards set forth in Sections 1522 and 1522.1 of the Health and Safety Code, with respect to any prospective foster parent, adoptive parent, or any adult who resides or is employed in the Tribally Approved Home.

(1) The certification must provide the address of the home, the names of the individuals in the household that have been cleared, the date of the completion of the clearance for each individual, and if any exemptions were granted.

(2) Documentation that the Tribal Child Welfare Agency has agreed to report within 24 hours to the county social worker responsible for the child placed in the tribally approved home, any notification to the tribal agency by the Department of Justice, of a subsequent state or federal arrest or disposition notification involving an individual associated with the tribally approved home.

(b) The social worker shall conduct the verifications required by Section 31-445.14.

.164 Should the social worker have any concerns about the safety of the home, the social worker must consult and collaborate with the tribe to address any concerns.

.165 Absent good cause to the contrary, the social worker must follow the ICWA placement preferences, which include the Tribally Approved or Tribally Specified Home designated by the child's tribe.

~~(f)~~.17 (Continued)

~~(H)~~.171 (Continued)

~~(A)~~ through ~~(F)~~ renumbered to (a) through (f) respectively (Continued)

~~(g)~~.18 (Continued)

~~(H)~~.181 (Continued)

~~(A)~~(a) (Continued)

~~(B)~~(b) (Continued)

~~(h) — Meet the requirements specified in Section 31-515 when placing an Indian child.~~

~~(i)~~.19 (Continued)

~~(j)~~.20 (Continued)

~~(k)~~.21 (Continued)

~~(H)~~.22 (Continued)

~~(m)~~.23 (Continued)

~~(n)~~.24 (Continued)

~~(H)~~.241 (Continued)

~~(t)~~.25 (Continued)

~~(p)~~.26 (Continued)

~~(q)~~.27 (Continued)

~~(r)~~.28 (Continued)

~~(s)~~.29 (Continued)

~~(4)~~ through ~~(5)~~ renumbered to .291 through .295 respectively (Continued)

~~(t)~~.30 (Continued)

~~(4)~~.301 (Continued)

(a) through (d) (Continued)

~~(u)~~.31 (Continued)

~~(v)~~.32 (Continued)

~~(w)~~.33 Document the reason(s) for the following, when applicable:

~~(4)~~.331 The child's transfer to another placement location.

(a) In the case of an Indian child, in addition to documenting the reasons for the transfer also document the active efforts taken to make the transfer within the order of ICWA placement preferences as required by Section 31-420.3, which shall include making contact with the child's tribe to solicit assistance and support in identifying an appropriate placement for the child.

~~(2)~~.332 (Continued)

~~(x)~~.34 Develop a discharge plan for any child who:

(1) .341 (Continued)

(2) .342 Is leaving a group home placement to return to parent(s), ~~kin~~ guardian(s), or Indian custodian(s), relative(s) or extended family member(s) or an adoptive family or to a placement in a foster family home.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code and Assembly Bill 1695, Section 21.

Reference: Sections 224.6, 309, 319, 361.2, 361.3 (~~as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997~~), 361.31, 361.4, 361.7, 309(d), 361.3, and 362.7 (~~as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001~~), 10553.12, 11467.1, and 16501, Welfare and Institutions Code; ~~and~~ Sections 1505(o) and 1530.8, Health and Safety Code; 25 USC 1915 and 1931; and 45 CFR 1355.20.

**Amend Section 31-406**

**31-406 SOCIAL WORKER/PROBATION OFFICER RESPONSIBILITIES 31-406  
FOR PLACEMENTS IN COMMUNITY TREATMENT FACILITY**

.12 (Continued)

(b) (Continued)

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(e) (Continued)

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Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

References: Sections 4094, 4094.5, 4094.6, 4094.7, 5585.58 and 5600.3, Welfare and Institutions Code; Sections 1502 and 1502(a)(8), Health and Safety Code; and In re Roger S. (1977) 19 Cal. 3d 921.

**Amend Section 31-410 to read:**

**31-410 TEMPORARY PLACEMENT**

**31-410**

- .1 Temporary placement services shall consist of emergency shelter care and out-of-home respite care.
- .2 Temporary placement services shall be provided when the social worker has considered and/or used in-home services and has determined that the provision or continued provision of these services will not safely maintain the child in his/her own home.
- .3 For temporary placement services involving an Indian child, the social worker shall, to the extent possible, collaborate with the child's tribe in an attempt to prevent the removal of the child and to solicit tribal assistance and support in the placement of the child.
  - .31 When selecting a temporary placement for an Indian child, the social worker shall, to the extent possible, adhere to the ICWA placement preference order required in Section 31-420.3.
  - ~~.3.4~~ (Continued)
  - ~~.4.5~~ (Continued)
    - ~~.41.51~~ (Continued)
    - ~~.42.52~~ (Continued)
      - ~~.421.521~~ (Continued)
    - ~~.43.53~~ (Continued)
      - ~~.431.531~~ (Continued)
      - ~~.432.532~~ (Continued)
  - ~~.5.6~~ (Continued)
    - ~~.51.61~~ The assessment shall include, but is not limited to, all of the following:
      - ~~.511.611~~ An in-home inspection to assess the safety of the home as required in Welfare and Institutions Code Section 309(d); except in the case of an Indian child whose tribe has recommended a home approved according to their tribal standards, pursuant to 25 U.S.C. 1915(b).
      - .612 Where an Indian child is being placed in a Tribally Approved Home, the tribe's home assessment is considered as equivalent to state licensing standards

applicable to foster family homes and shall be consistent with Section 31-405.1(f).

**HANDBOOK BEGINS HERE**

~~(a)~~ (Continued)

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~~.512-.613~~ (Continued)

~~.513-.614~~ (Continued)

**HANDBOOK BEGINS HERE**

~~(a)~~ (Continued)

**HANDBOOK ENDS HERE**

~~.514 .615~~ (Continued)

**HANDBOOK BEGINS HERE**

~~(a)~~ (Continued)

~~(b)~~ (Continued)

**HANDBOOK ENDS HERE**

~~.515.616~~ (Continued)

(a) through (d) (Continued)

**HANDBOOK BEGINS HERE**

~~.52~~ (Continued)

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~~.6.7~~ (Continued)

~~.61~~ through ~~.66~~ ~~.71~~ through ~~.76~~ (Continued)

.8 The temporary placement of an Indian child shall be based on the following needs of the child as well as those needs specified in Section 31-410.7 above:

- .81 The least restrictive setting which most approximates a family-like environment and in which the child's special needs, if any, can be met.
- .82 The reasonable proximity to the child's home, taking into account any special needs of the child.
- .83 The prevailing social and cultural standards of the Indian child's tribe and community in which the parent or extended family members reside or maintain social and cultural ties.

Authority Cited: Sections 10553 and 10554, 16507.5(b), Welfare and Institutions Code and Assembly Bill 1695, Section 21 (Chapter 653, Statutes of 2001).

Reference: ~~Sections 309 (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 319 (as amended by Senate Bill 2232, Chapter 1530, Statutes of 1990), 319(d) (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 309, 309(d), 319, 319(d), 319(f), 361.2(b), 361.2(g), 361.2(h), 361.2(e)(7), 361.31, 361.7, 362.7, 366(c), 727, 11402, 11467.1, 16501.1(c), and 16507.5(b) (as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001), 361.2(b) and (g), 366(c), 11467.1, and 16501.1(e), Welfare and Institutions Code; Sections 1505(o) and 1530.8, Health and Safety Code; Sections 11170(b)(10)(A) and 11170(c), Penal Code; 25 USC 1901 et seq. and 42 U.S.C. ~~Section 675(1)(A)~~; and *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896.~~

**Amend Section 31-420 to read:**

**31-420 FOSTER CARE PLACEMENT**

**31-420**

- .1 The foster care placement shall be based on the following needs of the child including, but not limited to:
  - .12 (Continued)
  - .13 In the case of an Indian child, the child's tribal affiliation and the cultural and traditional practices of the tribe shall be considered.
  - ~~.13~~ through ~~.18~~ renumbered to .14 through .19 (Continued)
- .2 When selecting a foster care placement for the child, the social worker shall adhere to the following priority order:
  - .21 The home of a relative, including the non-custodial parent, in which the child can be safely placed as assessed according, but not limited to, the requirements specified in Welfare and Institutions Code Section 361.3.
    - .211 Preferential consideration for placement of the child shall be given to a non-custodial parent, then an adult who is a grandparent, aunt, uncle or sibling of the child, except that if the child is an Indian child and the non-custodial parent is not available or appropriate for placement of the child, then the requirements of Section 31-420.3 shall apply.
    - (a) (Continued)

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- ~~.212~~ A copy of the written assessment made pursuant to Welfare and Institutions Code Section 361.3 may be made available to the appropriate adoption agency in the event that the relative(s) considered agree to become a permanency planning family, so that an abbreviated adoption assessment may be made if adoption becomes the permanency alternative implemented for the child. See Section 31-410.513(a) and Sections 31-410.514(a) and (b) Handbook Sections 31-410.614 and .615.

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- ~~.213~~.212 (Continued)
- .22 (Continued)
- .23 (Continued)

.25.24 (Continued)

.251.241 (Continued)

.3 When selecting a foster care placement for an Indian child the social worker shall engage in active efforts to adhere to the following ICWA placement preference requirements:

.31 The prevailing social and cultural standards of the Indian community in which the parent or extended family members reside or maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied.

.311 A determination of the applicable prevailing social and cultural standards may be confirmed by the Indian child's tribe or by the testimony or other documented support of a qualified expert witness who is knowledgeable regarding the social and cultural standards of the Indian child's tribe.

.32 The services of the Indian child's tribe shall be used, when available, in seeking to secure a placement within the order of placement preferences.

.33 The social worker shall select the least restrictive placement that most approximates a family-like environment and in which the child's special needs, if any, may be met. The placement shall be within reasonable proximity to the child's home, taking into account any special needs of the child.

.331 Preference shall be given to the child's placement with one of the following, in descending order:

(a) A member of the Indian child's extended family, which shall be defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(b) A Tribally Approved Home or a Tribally Specified Home as so designated by the Indian child's tribe.

(c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority (a state licensed home; a home certified by a licensed foster family agency).

(d) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

- .332 A tribe may establish a different preference order which must be followed so long as the placement is in the least restrictive setting appropriate to the particular needs of the child.
- .333 Deviation from the preference order may occur only with good cause, which may include but not necessarily be limited to the following:
- (a) The request of the parent or Indian custodian;
  - (b) The request of the Indian child, when of sufficient age;
  - (c) The extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; or
  - (d) The unavailability of suitable families based on documented active efforts to identify families meeting the preference criteria.
- .34 When no preferred placement is available, active efforts shall be made and documented to place the child with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe.
- .35 A record of each placement shall be maintained in perpetuity, including the active efforts made to comply with the placement preference order, and the placement history shall be available to the Secretary of the Interior and/or the child's Indian tribe, upon request to the county.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code and Assembly Bill 1695, Section 21 (Chapter 653, Statutes of 2001).

Reference: Sections 309(d), 319(f), 361.2(b), 361.2(e)(2) and (3), 361.2(g) and (h), 361.3, (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 309(d), 319(f), 361.2(h), 727, 11402, and 16507.5(b) (as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001); 361.31, 361.31(h), 361.7, 366(c), 727, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, 16501.1(b) and (c), 11402, 11467.1, 16501.1(b) and (c), and 16507.5(b), Welfare and Institutions Code; Sections 1502, 1502(a)(8), and 1530.8, Health and Safety Code; Section 275, Civil Code; 25 USC 1915; 42 U.S.C. Section 671(1)(A); and Public Law 105-89 (Adoption and Safe Families Act of 1997).

**Amend Section 31-425 to read:**

**31-425 PERMANENT PLACEMENT**

**31-425**

- .1 The permanent placement shall be based on the following needs of the child including, but not limited to:
  - .11 (Continued)
  - .12 The child's age, sex, tribal affiliation and cultural background, including racial or ethnic and religious identification.
  - .13 Capability of a relative, Indian custodian, the out-of-home care provider(s), adoptive parent(s), or guardians, to meet the specific needs of the child.
    - .131 (Continued)
    - .132 (Continued)

**HANDBOOK BEGINS HERE**

~~.133~~ (Continued)

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- .133 In the case of an Indian child, capacity to encourage and protect the child's retention of connections to its tribe.
- .14 (Continued)
- .16 (Continued)
- .2 When selecting a permanent placement for the Indian child, the social worker shall adhere to the priority order specified in Sections 31-201.12(c)(2)(A) through (C).
  - .21 When selecting a permanent placement for an Indian child that may involve the adoption of the child or termination of parental rights, the social worker shall adhere to the adoptive placement preference standards specified in Section 31-201.121(c)(A)2.
  - .22 When the permanent placement of an Indian child may involve a foster care or guardianship placement the social worker shall adhere to the placement preferences standards specified in Section 31-420.3.
  - .23 When selecting a permanent placement of the Indian child, the social worker shall consider and consult with the child's tribe regarding Tribal Customary Adoption.

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The Indian child's tribe is the only entity that can elect Tribal Customary Adoption as the permanency option for the child. The tribe may express a preference for a different option. (WIC section 366.26(c)(1)(B)(VI). No tribe is required to elect Tribal Customary Adoption.

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.3 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224, 361.2, and 361.3 (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 361.31, 366.24, 366.26, 366.27 (as amended by AB 2129, Chapter 1089, Statutes of 1993), 16501 and 16501.1, Welfare and Institutions Code; and Section 275, Civil Code; and 25 USC 1915.

**Amend Section 31-430 to read:**

**31-430 ADDITIONAL REQUIREMENTS FOR VOLUNTARY PLACEMENTS**

**31-430**

- .2 Voluntary placement of a nondependent child shall occur only when there is a written voluntary placement agreement between the county and the parent(s)/guardian(s)/Indian custodian(s) pursuant to the provisions of Sections 16507.2, 16507.3, and 16507.4(b), Welfare and Institutions Code.
- .21 If the voluntary placement is of an Indian child, the consent to the placement shall be the written consent of a parent or Indian custodian and comply with the following:
- .211 The consent must be recorded no less than ten days after the birth of the child, in the presence of the judge of the Superior Court on SOC form 155C;
- .212 The judge must certify that the terms and consequences of the consent were fully explained in detail and that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language the person understood; and
- .213 The parent or Indian custodian is informed that consent may be withdrawn for any reason at which time the child must be returned to the parent or Indian custodian.
- .214 If the child is or may be an Indian child, ICWA notice shall be conducted as set forth in Section 31-125.7.
- .3 The social worker shall:
- .31 (Continued)
- .32 Provide a written statement informing the parent(s)/guardian(s)/Indian Custodian(s) that he/she may be responsible for a share of the family reunification services costs.
- .33 Assist the parent(s)/guardian(s)/Indian Custodian(s) of voluntarily placed children to understand that he/she still retains legal custody of the child even though he/she voluntarily places the child with the agency; and that he/she may limit, by written agreement, the scope of the foster parent's authority to give parental consent.

.34 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3, 16507.2, 16507.3, and 16507.4, Welfare and Institutions Code; Section 8606.5 and 8620, Family Code; 25 USC 1903 et. seq.; and California Rules of Court, rule 5.481.

**Amend Section 31-445 to read:**

**31-445      REQUIREMENTS FOR APPROVAL OF RELATIVE AND      31-445**  
**NONRELATIVE EXTENDED FAMILY FOSTER FAMILY HOMES**

.1      Prior to the placement of a child in a relative or nonrelative extended family member home, the child welfare agency shall assess the home and the caregiver to the approval standards by completing the following requirements:

.11      (Continued)

.12      An in-home evaluation of the home to verify that the home meets the health and safety standards set out in Title 22, Division 6, Chapter 9.5, Article 3 of the California Code of Regulations and has no safety defects that could pose a hazard to the child; except in the case of an Indian child being placed in a Tribally Specified or Approved Home, the home shall be evaluated as specified in Section 31-405.16.

.13      (Continued)

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~~.131~~ (Continued)

~~.132~~ (Continued)

~~.133~~ (Continued)

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.14      (Continued)

.2      Prior to the issuance of an approval document the agency must ensure the caregiver and home meet all the standards in California Code of Regulations, Title 22, Division 6, Chapter 9.5, Article 3, Caregiver Standards; except that in the case of an Indian child being placed in a Tribally Approved Home, the home shall be evaluated as specified in Section 31-405.16.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code; and Assembly Bill 1695, Section 21.

Reference: Sections 309, 319, 361.2, 361.3, 361.31, 361.4, 361.5, 362.7, 366, 366.1, 727, 11400, 11401, 11402, 11461, 16504.5, 16507.5, 16507.5(b), and 16518, Welfare and Institutions Code; Section 11105.2, Penal Code; and Sections 1505, 1521.5, 1521.6, 1522, and 1525.5, Health and Safety Code; 25 USC 1915 and 1931.

**Amend Section 31-510 to read:**

**31-510 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)**

**31-510**

.1 (Continued)

.2 The ICPC shall not be applicable ~~when a potential foster family makes a routine inquiry or application to an agency in a member state other than the state of the family residence.~~  
between member states under the following circumstances:

.21 When a potential foster family makes a routine inquiry or application to an agency in a member state other than the state of the family residence.

~~.21.211~~ (Continued)

.22 The ICPC shall not be applicable to any placement (sending or receiving) of an Indian child if the placement is made:

.221 between an Indian tribe and another Indian tribe; or

.222 between a county compact member and an Indian Tribal court that is assuming jurisdiction of the Indian child's case.

.3 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 7900, 7901, 7906, 7907.3, 7911, 7911.1 and 7912, Family Code; ~~and~~ Sections 361.2(c), 361.2(d), 361.21, 727.1, 16501.1(f)(4), and 16516.5, Welfare and Institutions Code; and Association of Administrators of the Interstate Compact on the Placement of Children Regulation No. 11.

**Repeal Section 31-515, in its entirety**

**~~31-515 INDIAN CHILD WELFARE ACT (ICWA) PROVISIONS 31-515~~**

- ~~.1 When a dependency petition is initiated by the social worker on behalf of a child who is or may be an Indian child the social worker shall:~~
- ~~.11 Identify in the petition that the child is or may be an Indian child as defined by the ICWA.~~
- ~~.111 To make such a determination, the social worker shall ask the child, his parent or custodian whether the child is or may be a member of an Indian tribe, or whether the child identifies himself/herself as a member of a particular Indian organization.~~
- ~~(a) When there is any oral or written information which indicates that the child is or may be an Indian child, the social worker shall:~~
- ~~(1) Obtain the name, address, date of birth, and tribal affiliation of birth parents, grandparents, and great grandparents.~~
- ~~(2) Obtain the name and address of tribal governing organizations.~~
- ~~(3) Complete Request for Confirmation of Child's Status as an Indian (SOC 318).~~
- ~~(4) Obtain a copy or photocopy of the child's state certified birth certificate.~~
- ~~(5) Send completed Request for Confirmation of Child's Status (SOC 318) and the birth certificate to the Bureau of Indian Affairs (BIA), Attention Tribal Operations for a determination as to whether or not the child is an Indian as defined by the ICWA.~~
- ~~.112 If a determination is made that a child is or may be an Indian child as defined by the ICWA after the initial petition is filed with the court, the county shall file an amended petition notifying the court of this determination.~~
- ~~.12 Give notice to the Indian child's parent(s) or Indian custodian(s) and the child's tribe(s), by registered mail with return receipt requested, of the pending proceedings and their right to intervene at any point in the proceedings. This notice shall be sent on Form SOC 319 "Notice of Hearing" and must be received by the Indian child's parent(s) or custodian and tribe no later than 10 days prior to the hearing date.~~

~~.121 When the identity or location of the parent(s), Indian custodian(s), or tribe cannot be determined, notice shall be given to the Secretary of the Interior (Secretary) by registered mail, return receipt requested.~~

~~(a) Notice to the Secretary shall be mailed to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California, 95825.~~

~~(b) The notice shall include the following information if known:~~

~~(1) Indian child's name, birthdate, and birthplace.~~

~~(2) Indian child's affiliation.~~

~~(3) Name, birthdate, birthplace and mother's maiden name of the Indian child's parent(s) or Indian custodian(s).~~

~~(4) A copy of the petition, complaint, or other document by which the proceeding was initiated.~~

~~.122 The Secretary will have 15 days from receipt of notice to provide the required notice in Section 31-515.12 to the parent(s), Indian custodian and tribe.~~

### ~~HANDBOOK BEGINS HERE~~

~~.123 A tribe, parent or Indian custodian entitled to notice of the pending of a child custody proceeding has a right, upon request to the court, to be granted an additional 20 days from the date upon which notice was received to prepare for participation in the proceeding.~~

### ~~HANDBOOK ENDS HERE~~

~~.13 Document efforts made to provide services and rehabilitative programs designed to prevent the breakup of the Indian family, and that such efforts were unsuccessful.~~

~~.131 It shall not be necessary to show such efforts have been made in emergency situations prior to temporary removal from the home where it is determined that, even with reasonable services being provided, such removal is essential to protect the child from serious physical or emotional damage.~~

~~(a) Efforts to provide services shall be made subsequent to such emergency removal.~~

- ~~.132~~ Where an emergency situation exists and it has been determined that an Indian child must be temporarily removed from the home, the worker shall make efforts to place the child in an Indian home, and shall notify the appropriate Indian tribal entity of the removal in order to solicit tribal assistance and support in the placement of the child.
- ~~.14~~ Present to the court clear and convincing evidence, by qualified expert witnesses in addition to testimony of county staff involved in the dependency action, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Where the county provides the expert witness, the witness shall be:
- ~~.141~~ A person other than the social worker who initiated the dependency action and:
- ~~(a)~~ A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices; or
  - ~~(b)~~ A lay expert witness who has substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or
  - ~~(c)~~ If a person described in Section 31 515.141(a) or (b) is not available a professional person who has substantial education and experience in the area of his or her specialty.
- ~~.2~~ If at the time of the dependency court appearance, no determination has been made regarding the child's status as an Indian child, as defined by the ICWA, the social worker shall:
- ~~.21~~ Advise the court of all information which indicates that the child may be an Indian child.
  - ~~.22~~ Advise the court of all efforts made to establish the child's status as an Indian child.
  - ~~.23~~ Request direction from the court on how to proceed with the dependency action.
  - ~~.24~~ Continue contacts with the BIA until the question of the child's status as an Indian child, as defined by the ICWA, has been resolved and the resolution is documented in the case record for future reference.

~~.3 The provisions of Section 31-515 et seq. shall be met when a petition for continued detention is filed by the social worker on behalf of an Indian child.~~

~~Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.~~

~~Reference: 25 USCA Section 1901 et. seq.~~

**Repeal Section 31-520, in its entirety**

~~31-520 PLACEMENT OF INDIAN CHILDREN 31-520~~

~~.1 In addition to the placement requirements specified in Chapter 31-400, the following requirements shall also apply when placing Indian children:~~

~~.11 The standards to be applied in Indian child placements shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family member maintains social and cultural ties.~~

~~.12 In any placement of an Indian child, the agency shall select the least restrictive placement which most approximates a family.~~

~~.121 Unless there is good cause to the contrary or the child's tribe establishes a different order of preference by resolution, the order of placement preference shall be as follows:~~

~~(a) A member of the Indian child's extended family.~~

~~(b) A foster home approved, specified or licensed by the Indian child's tribe.~~

~~(c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.~~

~~(d) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.~~

~~.13 The order of placement preference specified in Sections 31-520.121(a) through (d) shall not override current state licensing regulations.~~

~~.14 Licensure by an Indian child's tribe shall not constitute licensure by the state, nor shall licensure by the state constitute licensure by the Indian child's tribe.~~

~~.2 When an Indian child's parent(s) or Indian custodian voluntarily consents to a foster care placement, the following requirement shall be met:~~

~~.21 The authorized agency official and the Indian child's parent(s) or Indian custodian shall appear together before a judge of the Superior Court to sign the consent Form SOC 155-C.~~

- ~~.211~~ If a parent wishes to make a voluntary foster care placement of a newborn through a licensed adoption agency, and is considering relinquishment of the newborn to the agency, the appearance before the judge shall not be required unless the foster care placement continues for more than 30 calendar days because the relinquishment is not taken within such time period.
- ~~.22~~ In the presence of the judge and before the consent can be signed, the agency official shall explain the terms and consequences of the consent in detail to the Indian child's parent(s) or Indian custodian in a language understood by the parent(s) or Indian custodian.
- ~~.23~~ For the consent to be valid, it shall be necessary for the judge to certify in writing that the terms and consequences of the consent were fully explained in detail and fully understood, including that:
- ~~.231~~ The consent may be withdrawn and the child returned to the parent(s) at any time.
- ~~.232~~ The placement of the child will be in accordance with the order of placement preference specified in Sections 31-520.121(a) through (d).
- (a) When a consenting parent evidences a desire for anonymity, the agency shall inform the court of the desire and shall request direction from the court in applying the preferences.
- ~~.233~~ The return of the child shall be within an agreed-upon time period, ordinarily not to exceed three working days. In no case shall the return of the child require more than seven calendar days following the parent's request.
- ~~.24~~ Any consent given prior to or within ten working days of the birth of the Indian child shall not be valid.
- ~~.241~~ During such time period, the child shall be provided with necessary child protective services.
- ~~.3~~ Requirements regarding case records shall include the following:
- ~~.31~~ All Indian child placements shall be clearly documented on the placement history Form SOC 153.
- ~~.32~~ Efforts to comply with the placement preference order specified in Sections 31-520.121(a) through (d) shall be documented, and any deviations to the order shall be fully explained.

~~.33 The placement history shall be available to the Secretary of the Interior and/or the child's Indian tribe, upon request to the county.~~

~~Authority Cited Sections 10553 and 10554, Welfare and Institutions Code.~~

~~Reference: 25 USCA Section 1901 et seq.~~