



CDSS

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GOVERNOR

November 20, 2008

ALL COUNTY INFORMATION NOTICE NO. I-86-08

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHILD WELFARE SERVICES
PROGRAM MANAGERS
CHIEF PROBATION OFFICERS
TITLE IV-E AGREEMENT TRIBES

SUBJECT: TRIBALLY APPROVED FOSTER HOMES

REFERENCE: THE FEDERAL INDIAN CHILD WELFARE ACT (ICWA) OF 1978
CODIFIED AT 25 U.S.C. SECTION 1901 ET SEQ; ALL COUNTY
INFORMATION NOTICE I-43-04; ALL COUNTY INFORMATION
NOTICE I-94-06; ALL COUNTY LETTER NO. 08-02; SENATE BILL
(SB) 678, CHAPTER 838, STATUTES OF 2006; WELFARE AND
INSTITUTIONS CODE (W&IC) SECTIONS 361.31, 727.1; 45 CODE
OF FEDERAL REGULATIONS (CFR) 1355.20; HEALTH AND SAFETY
CODE SECTION 1505

The purpose of this notice is to provide information and clarification regarding the use of tribally approved homes as placement options for Indian children under county jurisdiction.

The ICWA at section 25 U.S.C. § 1915 (b), allows federally recognized tribes to establish their own licensing/approval standards and to approve homes for the purpose of foster placement or pre-adoptive placement of an Indian child. County social workers and probation officers are authorized to consider tribally approved homes for the potential placement into foster care of an Indian child under county jurisdiction. When an Indian child is involved in a dependency action, or a delinquency action where the child is at risk of entering foster care, the option of a tribally approved home should be considered. As will be explained further, licensing/approval requirements (e.g., the size of the home, whether more than two children are sharing a bedroom, etc.) cannot be used as rationale for not placing an Indian child in a tribally-approved home.

REASON FOR THIS TRANSMITTAL

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

Additionally, 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.

Home Approval Standards

It is important for county social workers and probation officers to be aware that, with the exception of background clearance requirements, tribally approved homes are not subject to state licensing approval standards. Tribes have the independent authority to approve foster homes using their own socially and culturally appropriate standards pursuant to the ICWA, at 25 U.S.C. § 1931, which provides that tribally approved homes are deemed equivalent to licensing or approval by a state.

The Federal Administration for Children and Families states: *“The definition of ‘foster family home’ at 45 CFR 1355.20 gives tribal licensing or approval authorities the jurisdiction to license or approve homes that are on or near Indian reservations. This is consistent with the ICWA; at section 1931(b), which states that for purposes of qualifying for funds under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe is equivalent to licensing or approval by a State. The authority to license or approve includes the authority to set standards.”*

California has further affirmed in state law that a tribally approved home is not subject to state licensing requirements when the child involved is eligible under the ICWA, and the placement is with a relative or extended family member of the child, or in a home licensed, approved, or specified by the Indian child’s tribe. (Health and Safety Code § 1505).

To confirm that a tribe has approved a home, the county social worker or probation officer should request written confirmation from the tribe. Depending on tribal practice, this may include a tribal council resolution or letter from the tribe identifying the prospective foster or adoptive parents and confirming that the tribe has approved the home.

Background Checks

Prior to placing a child in a tribally approved home, the county social worker must complete a criminal record and child abuse registry background check on **all** individuals residing in the home who are over age eighteen. Tribally approved or certified homes are not exempt from clearance requirements, which also includes federal requirements as mandated by Public Law 109-248, known as the Adam Walsh Child Protection and Safety Act of 2006, (the Adam Walsh Act). Each adult in the home must complete an *Out of State Disclosure and Criminal Record Statement* (LIC 508D) indicating whether

or not they have lived out of state within the last five (5) years. If an individual has lived out of state within the last five (5) years, the child welfare agency must check the child abuse registry in the other state, provided that state maintains a registry. This information must be clearly documented within the child's case record. A current list of registries and a template form for requesting information from another state is available on line at <http://cclid.ca.gov/PG561.htm>.

Tribes do not have access to the required California Department of Justice (DOJ) information to conduct background checks. The only exceptions are those with a Title IV-E Agreement with the California Department of Social Services (CDSS), with approved access from the DOJ¹. For cases under county jurisdiction the criminal background check must therefore be completed by the counties, just as for any other relative/Non-Related Extended Family Members (NREFM) placement. All clearances requirements, including the Child Abuse Central Index (CACI) clearance requirements must also be conducted as part of the safety considerations of the home.

In the event that an individual who has been approved or licensed by a tribe has a criminal record, the county social worker must follow the same guidelines and apply the same standards for criminal record exemptions as they would with any other relative/NREFM home.

Placement Preferences

The use of tribally approved homes is consistent with federal and state preferences for placement of children with relatives, and within the objective of placing children so that they retain ties to their communities. As soon as an Indian child is identified as having connections to a specific tribe, it is appropriate to explore the potential placement options with that tribe even though the formal noticing to the tribe has not been completed. Tribes are commonly composed of close knit communities of extended families. Even when individuals are not biologically related, they likely are eligible for consideration as NREFMs because of the pre-existing familial and advisor relationships that commonly exist through tribal cultural connections and customs.

When you know the child's tribe, you must consult with the tribe and when available make use of tribal services when formulating your placement recommendation. The ICWA specifies that placement of Indian children shall be in the least restrictive setting within reasonable proximity to the Indian child's home and meet the child's special needs. [W&IC § 361.31(g)] Placement must be made in accordance with the ICWA

Pursuant to SB 703, (Chapter 838, Statutes of 2007) tribes with Title IV-E Agreements are authorized to secure fingerprint access via the CA Department of Justice. At this time only the Karuk Tribe has such an agreement. Tribes must apply and secure approval for access from the Department of Justice. Questions arising regarding IV-E Tribes should be directed to the ICWA Specialist.

designated preferences, unless the court finds there is good cause to deviate from the order. [See also W&IC § 361.31(b)]

Foster care placement preference for Indian children must be given in the following order:

(1) a member of the child's extended family; (2) a foster home licensed, approved or specified by the Indian child's tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; and (4) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

Adoptive placement preferences are:

(1) With a member of the child's extended family; (2) with other members of the Indian child's tribe; and (3) with another Indian family. [W&IC § 361.31(c)]

In lieu of the placement preferences as stated above, any tribe may, by tribal resolution, choose another placement preference order. [W&IC § 361.31(d)]

Under the ICWA, cultural considerations and concern for tribal heritage are relevant to child custody proceedings. The standards applied in meeting the preference requirements of the ICWA are the prevailing social and cultural standards of the Indian community in which the child's parent or extended family resides, or with which the parent or extended family maintains social and cultural ties. Thus, the ICWA requires that states defer to Indian social and cultural standards in placement and treatment assessments. [25 U.S.C. § 1915(d)]

Tribally approved homes are preferred to non-Indian foster homes under the ICWA. Local county child welfare agencies and probation departments should work with tribes to develop an understanding of tribal practice, to find tribally approved homes and utilize these homes unless good cause to the contrary exists.

Non-Federally Recognized Tribes

Because the ICWA does not apply to non-federally recognized tribes, in the case where a non-federally recognized tribe requests that their placement recommendations be considered, such recommendations may be considered by the county but the placement would still be subject to county licensing and/or relative approval standards. In addition, a court may permit a non-federally recognized tribe from which the child is descended, to participate as a formal party in child welfare proceedings. Formal participation by the

non-federally recognized tribe will inform the court on placement options and services available for the child within the child's extended family or the tribal community. [W&IC § 306.6; Fam. Code § 185] The purpose of allowing non-federally recognized tribes to participate in child welfare proceedings is that they can assist the court in making decisions that are in the best interest of the child by informing the court about placement options, identification of relative or non related extended family members and in the identification of Indian specific services and programs available to the child. Taking into consideration recommendations from the child's tribe will facilitate decisions that are best suited to the Indian child notwithstanding the tribe's technical status.

Urban Indian Children

Counties in urban areas commonly encounter Indian children from out of state or out of area tribes. The ICWA placement preferences (25 U.S.C. §1915(d), W&IC §361.31), and noticing requirements are clearly applicable in these cases. Additionally, the placement preferences specified in W&IC § 361.3, which directs counties to identify and consider relatives for the placement of the child, must be utilized. At the same time, counties should immediately contact the child's tribe to seek assistance in the identification of a home that meets the tribe's placement preferences, even though the formal noticing process may not yet be complete. Further, counties are encouraged to work with local Indian organizations (some which exist specifically to serve Urban Indians) to promote identification of culturally appropriate resources for Indian children and families, and to promote an understanding of the history of Native Americans in urban settings, their separation from their Tribe, and the implications to their relationships.

Interstate Placements

California adopted the Interstate Compact on Placement of Children (ICPC) thus enacting agreed upon requirements and standards between receiving and sending states when there are out of state placements of children. [Family Code §7900 et. seq.] Accordingly when a county is retaining the care and placement responsibility of a child, the county must follow the ICPC protocols, except as specified below.

A. Transfer to a Tribal Court

As it relates to Indian children the only exception in state code to application of the ICPC for an out of state placement of an Indian child is when the child is being transferred to a tribal court's jurisdiction. The SB 678 specified in Family Code §7907.3 that the ICPC does not apply to a transfer of jurisdiction to a tribal court.

B. County and Tribally Approved Home in Another State

Tribes located in other states have the authority under the ICWA to approve homes within their tribal standards. However, California does not provide an exception to applicability of the ICPC when the county court continues to retain jurisdiction of the Indian child and seeks to place in an out of state tribally approved home. Counties therefore need to continue to follow ICPC requirements, and thus defer to the out of state ICPC administrator to assure that the potential placement is a tribally approved home per the ICWA, and that the placement meets criminal record and other requirements set forth through ICPC protocols.

Title IV-E Funding

Placements in tribally approved homes under the jurisdiction of a county dependency or juvenile court and supervised by the child welfare agency or probation department, continue to qualify for Title IV-E foster care maintenance payments or adoption assistance benefits as long as the home is on or near an Indian reservation. Federal Code Regulation (45 CFR 1355.20) states *“Foster family home means, for the purpose of Title IV-E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the state licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies), that provides 24-hour out-of-home care for children.”*

In the case of a tribe with a Title IV-E Agreement and where the tribe has accepted jurisdiction of the case, the county court would dismiss the action and transfer the case to the Title IV-E tribe. The Title IV-E funding would follow the Indian child, if Title IV-E eligible.

Placement Responsibility

In all situations, the responsibility for determining the appropriateness of a placement for a child, including an Indian child, continues to rest with the county social worker. If there is reason to believe that the placement would not be a safe one, the county placement worker should discuss the concern with the tribe and allow for possible correction of the issue of concern. Ultimately, the final placement decision and responsibility for that placement is with the county child welfare services agency.

Collaboration with Tribes

Based on feedback obtained from both county and tribal representatives, it is essential that the counties and the tribes work collaboratively from the start to successfully and efficiently identify an appropriate placement for the Indian child. From initial contact with

the child and family, the social worker has an affirmative and continuing duty to ask about any possible Indian heritage. [W&IC § 224.3(a)] If the child's tribe is identified, it is appropriate to seek the cooperation of the Indian child's tribe by contacting the tribe's ICWA worker. Additionally, tribes may have resources to provide necessary services and supports through tribal programs that may not be available via the county. Some tribes with Tribal Temporary Assistance for Needy Families (TANF) programs are utilizing the services available to Indian families to address issues that brought them to the attention of the child welfare services agency.

There are various models of cooperation that encourage and strengthen collaboration between tribes and county child welfare services agencies throughout California. One example of this is the use of ICWA roundtables which involve representatives from multiple agencies such as the dependency court, the county child welfare services agency, tribes and others, to facilitate communication prior to the removal of children, for placement decisions and for ongoing proceedings. The incorporation of tribal social workers in multidisciplinary team approaches such as Wraparound, Family to Family and Differential Response approaches are other options that are being used to improve communication and services for Indian children and families. The use of memorandums of understandings that outline protocols for county and tribal communications in emergency situations that might require the removal and protective placement of Indian children, can also be used.

Administrative Office of the Courts (AOC) ICWA Initiative

In an effort to promote and facilitate the ICWA compliance, the CDSS has entered into an agreement with the AOC, Center for Children and Families to carry out an ICWA Initiative. This invaluable partnership provides a wealth of resources for technical assistance to county child welfare agencies, probation departments and court officers. Information about this project may be found at:

<http://www.courtinfo.ca.gov/programs/cfcc/programs/description/jrta-IndianChild.htm>

If you have any questions about this notice, or need technical assistance, please contact Teresa Contreras, Chief, or Lee Ann Kelly, Assistant Chief, Office of Child Abuse Prevention, at (916) 651-6960.

Sincerely,

Original Signed Document Signed By:

LINNÉ STOUT, Acting Chief
Children Protection and Family Support Branch