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REASON FOR THIS TRANSMITTAL

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

March 19, 2014

ALL COUNTY LETTER NO. 14-21

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

SUBJECT: IMMIGRATION AND THE CHILD WELFARE SYSTEM

REFERENCE: SENATE BILL (SB) 1064 (CHAPTER 845, STATUTES OF 2012)

This All County Letter (ACL) provides county child welfare and probation departments and Title IV-E tribes with information and instructions regarding SB 1064, which is also commonly referred to as "The Reuniting Immigrant Families Act." The purpose of this new state law is to eliminate or reduce family reunification barriers for immigrant families by creating uniformity across state and county policies and practices. Broadly speaking, SB 1064 is designed to help ensure that undocumented immigrant parents and relatives are treated as equitably as possible in child custody and dependency cases in California.

BACKGROUND

Many of the provisions in SB 1064 were derived at least in part from the findings and recommendations in Seth Freed Wessler's report "Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System." This report was published by the Applied Research Center (ARC), a racial-justice think tank, in November 2011. (The ARC is now known as Race Forward: The Center for Racial Justice Innovation.) "Shattered Families," which can be accessed in both English and Spanish at http://www.raceforward.org/research/reports/shattered-families?arc=1, illustrates how immigrant families are sometimes separated in the aftermath of parental

detention and deportation. Data for the report was gathered from six key states, including California.

According to the United States Department of Homeland Security (DHS), almost 205,000 parents of children who are citizens of the United States were deported from July 1, 2010 to September 31, 2012. This amounted to nearly 23 percent of all deportations for that time period. As noted in "Shattered Families," the ARC estimated that in 2011 there were at least 5,100 children nationwide living in foster care whose parents had either been deported or detained (approximately 1.25 percent of the total children in foster care in 2011).

In 2003, the responsibilities of what was formerly known as the Immigration and Naturalization Service were transferred to the DHS. The DHS' Immigration and Customs Enforcement (ICE) is responsible for domestic investigative and enforcement duties associated with enforcing federal immigration laws. The California Department of Social Services (CDSS) understands that, since 2011, ICE has had the capability to coordinate with all California counties on immigration matters.

SUMMARY

This new state law has an impact on multiple immigration-related issues affecting child welfare policies and practices. The summary below provides an overview of SB 1064's provisions. It is followed by a more in-depth discussion of those same provisions.

- Immigration status alone cannot be used as a disqualifying factor when making placement and custody decisions.
- When certain conditions are met, the court is authorized to provide extensions in the family reunification period if a parent or guardian has been arrested and issued an immigration hold, detained by the DHS, or deported.
- In making determinations regarding family reunification, the court is required to consider any barriers a detained or deported parent or guardian may face in accessing court-ordered services and maintaining contact with his or her child.
- The court may order that reasonable services include reasonable efforts on the part of counties to perform tasks such as assisting parents who have been deported to contact child welfare authorities in their country of origin.
- Social workers must document in the case plan the particular barriers to a detained parent's access to court-mandated services and ability to maintain contact with his or her child.
- Relative caregivers are to be provided with required information about adoption and guardianship regardless of their immigration status.

- For the purposes of approving relatives and Nonrelative Extended Family Members (NREFMs) as potential caregivers, an identification card from a foreign consulate or a foreign passport is now considered a valid form of identification for conducting a criminal records check and fingerprint clearance check.
- There are new requirements for information that must be included in a Memorandum of Understanding (MOU) when a county chooses to establish an MOU with a foreign consulate regarding juvenile court cases.
- A CDSS web page has been created that includes resources that provide guidance and best practices to counties about (1) establishing an MOU with a foreign consulate and (2) immigration relief.

THE SB 1064 PROVISIONS AND IMPLEMENTATION INSTRUCTIONS

The provisions of SB 1064 are discussed in more detail below:

Prohibition Against Using Immigration Status as a Disqualifying Factor

Under SB 1064, immigration status alone cannot be used to disqualify relatives and guardians when making placement decisions and in assessing relatives for home approval, as follows:

- As specified in Welfare and Institutions Code (W&IC) section 309(a), upon delivery to a social worker of a child who has been taken into temporary custody, and if certain criteria are met, the social worker is to immediately release the child to the child's parent, guardian, or responsible relative "regardless of the parent's, guardian's, or relative's immigration status."
- When the court orders the removal of a child from his or her home and the child becomes a dependent of the court, the following applies:
    - Among other placement options, the child may be placed in the approved home of a relative "regardless of the relative's immigration status." (Please see W&IC section 361.2(e)(2).) The child may also be placed in the home of a non-custodial parent "regardless of the parent's immigration status." (Please see W&IC section 361.2(e)(1).)
    - Similarly, preferential consideration for placement is to be given to a relative who requests placement of the child in his or her home "regardless of the relative's immigration status." (Please see W&IC section 361.3(a).)

In addition, under SB 1064, the use of immigration status alone as a disqualifying factor in custody and probate guardianship proceedings is prohibited. (Please see Family Code section 3040(b) and Probate Code sections 1510(a) and 1514(c).)

Addressing Barriers to Reunification

Key provisions in SB 1064 authorize the court to continue reunification efforts for separated immigrant families, as specified, and require the court to take into account any particular barriers a detained or deported parent or guardian may face in accessing court-ordered services and maintaining contact with the child. These provisions are similar to existing provisions for incarcerated or institutionalized parents seeking family reunification. Detained or deported parents or guardians who are unable to access court-ordered services may lose their rights if they cannot complete the court-ordered case plan.

In order to address barriers to reunification that detained and deported parents and guardians face, SB 1064 modified several sections of the Welfare and Institutions Code related to reunification services ordered at disposition and conditions under which reunification services may be continued. The following summarizes these changes as they relate to detained and deported parents and guardians:

- If a parent or guardian is detained by the DHS or deported, and the parent or guardian is otherwise entitled to receive reunification services, the court is required to order reasonable services *at disposition* unless the court determines that those services would be detrimental to the child. The services may include such things as maintaining contact between the parent or guardian and the child through collect telephone calls, transportation services where appropriate, and visitation services where appropriate. In determining the content of reasonable services, the court must consider the particular barriers to a detained or deported parent's or guardian's access to those services and ability to make contact with the child. (Please see W&IC section 361.5(e)(1).)
- A parent or guardian who is incarcerated or detained by the DHS may be ordered to participate in court-ordered counseling or other treatment services unless the facility does not provide access to the services. Similarly, a parent or guardian who has been deported may be ordered to participate in court-ordered services unless the services are not accessible in the deported parent's or guardian's country of origin. (Please see W&IC section 361.5(a)(3).)
- In addition to services that may be offered to an incarcerated or institutionalized parent, court-ordered reunification services for a parent who has been deported may include reasonable efforts on the part of counties to:
    - Assist a parent who has been deported to contact child welfare authorities in his or her country of origin;
    - Identify any available services that would substantially comply with case plan requirements;
    - Document the parent's participation in those services; and

- Accept reports from local child welfare authorities in the parent's country of origin as to the parent's living situation, progress, and participation in those services.

(Please see W&IC section 361.5(e)(1)(E).)

- *In determining whether court-ordered services may be extended*, the court is required to consider the special circumstances of a parent or guardian who has been detained by the DHS or deported when determining the extent to which a parent or guardian has availed himself or herself of the services provided. (Please see W&IC sections 366.21(e) and (f).)
- If a party files a motion to terminate reunification services prior to the 12-month permanency hearing on the basis that the parent or guardian has failed to visit the child or participate regularly in or make progress in the treatment plan, the court is required to consider factors that include the parent's or guardian's detention by the DHS or deportation. (Please see W&IC section 388(c)(2).)
- At the 12-month permanency hearing, the court may continue reunification services for up to six months if the parent or guardian has been arrested and issued an immigration hold, or has been detained or deported, and the court determines that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. The hearing must occur within 18 months of the date the child was removed from the custody of the parent or guardian. (Please see W&IC sections 361.5(a)(3), 366.21(g)(2), and 366.21(g)(3).)
- If a child is not returned to the parent or guardian at the 18-month permanency review hearing, the court may continue the case for up to six months if the parent or guardian has been recently discharged from the custody of the DHS, the parent or guardian is making significant and consistent progress in establishing a safe home for the child's return, and the court determines that the best interests of the child would be met by the provision of additional reunification services. The hearing must occur within 24 months of the date the child was removed from the custody of the parent or guardian. (Please see W&IC section 366.22(b).)

Case Plan Requirements

As with other cases, the social worker must document the reunification efforts made by parents or guardians who have been detained or deported. As required in W&IC section 361.5(e)(1)(D), and as with an incarcerated or institutionalized parent, the social worker must document in the case plan any particular barriers to a detained parent's access to court-mandated reunification services and ability to maintain contact

with his or her child. The social worker should also document any plans to address those reunification barriers. In addition, the social worker should document in the case plan any efforts that have been made to assist a parent who has been deported, as described in W&IC section 361.5(e)(1)(E). (Please see page five of this ACL.)

With regard to Special Immigrant Juvenile Status (SIJS), a form of immigration relief, counties are reminded of the existing requirement in W&IC section 16501.1(f)(16)(A) to include information in the case plan on whether a youth has "an in-progress application pending for . . . Special Immigrant Juvenile Status or other applicable application for legal residency and an active dependency case is required for that application." For eligible immigrant children and youth, this may be their only opportunity to establish legal residency. (Please see page nine for more information about SIJS.)

Dissemination of Information Regarding Permanency

Relative caregivers are to continue to be provided with information about guardianship and adoption prior to the establishment of legal guardianship or the pursuit of adoption "regardless of immigration status." (Please see W&IC sections 361.5(g)(2)(B), 366.21(i)(2)(B), and 366.25(b)(2)(B).)

Valid Form(s) of Identification for Criminal Records Checks

For purposes of the approval of relative and NREFM caregivers only, an identification card from a foreign consulate or a foreign passport is now considered a valid form of identification for persons required to have a criminal records check under W&IC sections 309(d)(1) and 361.4(b). *This does not apply to the licensing of foster family homes; the criminal background check process for licensed foster family homes remains unchanged.*

In California, the Mexican Matricula card is the most common identification card from a foreign consulate. For a listing of Mexican consulates in the United States, please see the following websites: http://www.vec.ca/english/10/consulates-usa.cfm and http://www.mexonline.com/consulate.htm.

New Requirements for MOUs with a Foreign Consulate

The SB 1064 does not require counties to enter into MOUs with foreign consulates pertaining to juvenile court cases in which a parent has been arrested and issued an immigration hold, has been detained by the DHS, or has been deported to his or her country of origin. However, a county that *chooses* to enter into an MOU with a foreign consulate must meet the new requirements enacted by SB 1064.

As specified in W&IC section 10609.95(b), any such MOU with a foreign consulate must include, but not be limited to, procedures for the following:

- Contacting a foreign consulate at the onset of a juvenile court case;
- Accessing documentation for the child;
- Locating a detained parent;
- Facilitating family reunification once a parent has been deported to his or her country of origin;
- Aiding the safe transfer of a child to the parent's country of origin; and
- Communicating with relevant departments and services in the parent's country of origin, including, when appropriate, allowing reports from the foreign child welfare authorities documenting the parent's living situation and participation in service plans in the country of origin that are in compliance with the case plan requirements.

Counties that have an existing MOU with a foreign consulate may want to review the MOU for consistency with these provisions.

The CDSS SB 1064 (Child Welfare and Immigration) Web Page

Under SB 1064, W&IC sections 10609.95 and 10609.97 were added to require CDSS to provide guidance about best practices to counties—and to facilitate an exchange of information and best practices among counties—on an annual basis regarding the following topics:

- Establishing MOUs with foreign consulates for juvenile court cases in which a parent or guardian has been arrested and issued an immigration hold, or has been detained or deported;
- Assisting a child in applying for the SIJS program; and
- Applying for T visas, U visas, and Violence Against Women Act (VAWA) self-petitions.

State law permits the CDSS to meet this requirement by posting training and other resources on the CDSS website. In line with this, the CDSS has developed a web page that provides access to resources pertaining to MOUs with foreign consulates and immigration relief. The CDSS SB 1064 (Child Welfare and Immigration) web page is available on the public CDSS website at http://www.childsworld.ca.gov/PG3466.htm.

In addition, the requirements of SB 1064 dovetailed with efforts to better serve the needs of Latino children and families through a time-limited advisory group, the Child

Welfare Latino Practice Advisory Committee (LPAC). The LPAC is a collaboration of the CDSS and the County Welfare Directors Association. As part of its charge, the LPAC developed a website to collect information and resources for child welfare agencies regarding Latino children and families, including research, policy and legal issues, promising practices and strategies for organizational improvement. The LPAC website was launched on November 1, 2013, and can be accessed at http://cssr.berkeley.edu/ucb_childwelfare/lpac/.

While the LPAC website specifically focuses on Latino families, many of the resources on the website related to state and federal immigration information are relevant regardless of the child's or the family's country of origin. To take advantage of this, the CDSS SB 1064 (Child Welfare and Immigration) web page has links to the LPAC website, when appropriate, for better efficiency and access to information. Both the web page and the LPAC website will be updated as new information becomes available.

Background Information on Immigration Relief

As background information related to W&IC section 10609.97(a), the SIJS program is an important part of immigration law. It applies to children/youth who are under the jurisdiction of a juvenile court and cannot be reunified with one or both parents due to abuse, neglect or abandonment. A child/youth who obtains lawful permanent residency (i.e., a "green card") through the SIJS program can live and work permanently in the United States. The child/youth may also eventually apply to become a citizen of the United States.

In addition, with regard to W&IC section 10609.97(b), the T visa is for non-citizens who have been the victims of severe forms of human trafficking. The U visa is for non-citizens who are victims of serious crimes and who can be helpful in the investigation or prosecution of those crimes. Finally, the VAWA is a form of immigration relief that permits certain abused family members of citizens or permanent residents to self-petition for a green card without the cooperation of the abuser.

For more information on all of these types of immigration relief, including access to application instructions and forms, please see the CDSS SB 1064 (Child Welfare and Immigration) web page at http://www.childsworld.ca.gov/PG3466.htm.

THE ICE PARENTAL INTEREST DIRECTIVE

Of special note, on August 23, 2013, ICE issued a directive on Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities, or the Parental Interest Directive. This directive expresses ICE's policy that ICE personnel ensure that the agency's immigration enforcement activities do not unnecessarily disrupt the

parental rights of undocumented parents and legal guardians. For more information about this timely directive that reflects in part the spirit of SB 1064, please see the following:

A First Focus summary of the Parental Interest Directive, issued September 2013, can be accessed at:
http://www.firstfocus.net/sites/default/files/Parental%20Interest%20Directive%20Final.pdf

The Parental Interest Directive itself can be accessed at:
http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf

FUTURE SB 1064 IMPLEMENTATION STEPS

Counties are encouraged to continue to coordinate with one another and to share resources on immigration-related issues as much as possible. The CDSS also invites counties to forward to the Foster Care Support Services Bureau (FCSSB) examples of any MOUs with foreign consulates—or immigration-related best practices guides or policy statements—that are not already on the CDSS SB 1064 (Child Welfare and Immigration) web page. Links to those documents will then be posted on the web page, as a means of ensuring that information on the web page is as up to date as possible.

If you have any questions about this ACL, or need to obtain the address for forwarding any immigration-related information to the FCSSB, please contact the FCSSB at (916) 651-7465.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division