



CDSS

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STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
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EDMUND G. BROWN JR.
GOVERNOR

October 12, 2016

ALL COUNTY LETTER (ACL) NO.: 16-87

REASON FOR THIS TRANSMITTAL

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

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

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

REFERENCE: THE FEDERAL INDIAN CHILD WELFARE ACT OF 1978 CODIFIED AT 25 U.S.C. SECTION 1901 ET SEQ; 2015 BUREAU OF INDIAN AFFAIRS GUIDELINES FOR STATE COURTS AND AGENCIES IN INDIAN CHILD CUSTODY PROCEEDINGS; SENATE BILL (SB) 678, CHAPTER 838, STATUTES OF 2006; ACL NO. 08-02; ALL COUNTY INFORMATION NOTICE (ACIN) NO I-29-16.

The purpose of this ACL is to inform counties of the immediate release of the revised Division 31 Regulations to fully incorporate the requirements of the Indian Child Welfare Act (ICWA), as specified in California state law. This revision resulted from years of extensive collaboration and consultation between the California Department of Social Services (CDSS), counties and Tribal stakeholders. The revised Division 31 Regulations¹ comprehensively incorporate the requirements under SB 678 (Chapter 838, Statutes of 2006), and reflect court interpretations of both state and federal ICWA requirements as well as many of the best practices promulgated by the Bureau of Indian Affairs (BIA) in its *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings (Guidelines)*,² released on February 25, 2015. The revised regulations will be effective immediately upon their release on October 1, 2016.

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

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

Revised Division 31 Regulations

The CDSS, Children and Family Services Division is responsible for oversight, monitoring and providing guidance to ensure counties follow law and regulations regarding Indian child welfare practice in accordance with the federal ICWA, and its incorporation through enactment of SB 678 into California Welfare and Institutions, Family and Probate Codes.

Integration of the ICWA throughout Division 31 Regulations provides guidance on satisfying the legal requirements for **Active Efforts, Inquiry and Notice, Identifying Tribal Affiliation, Intervention by Tribes, Jurisdiction over Child Custody Proceedings, Placement Preferences, Tribally Approved Homes and Tribal Customary Adoptions**. An effort was made to augment the Division 31 Regulations by drawing from areas in the *Guidelines*, which Tribal Stakeholders and CDSS agree provide an important resource to counties in the application of the ICWA. The BIA Guidelines promote best practices for compliance with the goals and provisions of the ICWA by providing state courts, counties and tribes a framework to follow.

In preparation for the release of the revised Division 31 Regulations, CDSS, via ACIN No. 1-29-16 published on May 2, 2016, encouraged Child Welfare agencies to become familiar with the BIA Guidelines as well as the proposed regulation revisions. The CDSS encouraged Child Welfare agencies to update their policies and procedures and incorporate changes into their day-to-day practice. As an example, the law requires that Active Efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions and way of life of the Indian child's tribe. Active Efforts shall utilize the available resources of the Indian child's extended family, tribe and other Indian social service agencies, and individual Indian caregiver service providers.³ The revised regulations provide a much more detailed definition of Active Efforts and the Handbook refers to the BIA *Guidelines* for guidance. The examples of engaging the Indian child, the Indian child's parents, extended family members and custodian(s) contained in ACIN No. 1-29-16 were taken from the BIA *Guidelines*.

Inquiry and its Importance in Establishing Collaborative Relationships

Engagement of tribes and/or tribal representatives in the development of processes that support the efforts described above are critical to their success. Therefore, CDSS encourages strong, cooperative relationships between counties and tribes with the common goal of meeting the ICWA requirements and attaining outcomes that are in the best interest of the child. To support the development of such relationships, Child Welfare agencies shall collaborate with tribes located within their county, as well as with

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

tribes whose children reside in their county. Early identification of Indian children is imperative, therefore Child Welfare agencies shall ask whether a child is an Indian child at the earliest point of contact, inquire about tribal affiliation and, when possible, immediately proceed to inform the child's tribe, even before formal notice is required. This will facilitate the timely initiation of collaborative efforts between counties and tribes, thereby ensuring that Active Efforts are made to prevent the breakup of Indian families. The ACL No. 08-02 released January 30, 2008, provides specific guidance regarding the duty to inquire at first contact, noticing the tribes, and the legal obligations once a child has been confirmed to be an Indian child as defined by the ICWA. The revised Division 31 Regulations provide further guidance by clarifying mandatory requirements and the Handbook provides guidance with examples of best practices.

The revised Division 31 Regulations will provide a framework to ensure compliance with applicable laws and support for the maintenance of continuity in the lives of Indian children. Additionally, the BIA has issued its ICWA regulations which will go into effect on December 12, 2016. These regulations may be found at Title 25 of the Code of Federal Regulations, Chapter 1, Subchapter D, Part 23 ([25 CFR 23.1 et seq.](#)). The CDSS anticipates that there will be further changes to the Division 31 Regulations in response to the new federal BIA regulations and encourages counties to familiarize themselves with the BIA regulations in order to be in compliance with them upon their effective date.

For further information, on-demand training slides and helpful quick reference guides, you may visit the [Judicial Council of California ICWA Resource website](#) and the [Bureau of Indian Affairs ICWA website](#). If you have any questions or need further information, please contact the Child Welfare Policy and Program Development Bureau at (916) 651-6160.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

c: CWDA