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GOVERNOR

REASON FOR THIS TRANSMITTAL

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

July 27, 2017

ALL COUNTY LETTER NO 17-62

TO: ALL COUNTY CHILD WELFARE DIRECTORS
 ALL COUNTY CHIEF PROBATION OFFICERS
 ALL COUNTY CHILD WELFARE PROGRAM MANAGERS
 ALL FOSTER FAMILY AGENCY DIRECTORS
 ALL FOSTER CARE MANAGERS
 ALL TITLE IV-E AGREEMENT TRIBES
 ALL JUDICIAL COUNCIL STAFF
 ALL ADOPTION REGIONAL OFFICES

SUBJECT: NEW AUTHORITIES FOR TRIBAL BACKGROUND CHECKS

REFERENCE: [THE INDIAN CHILD WELFARE ACT \(ICWA\) 25 UNITED STATES CODE \(USC\) SECTION 1901](#); [THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006 42 USC SECTION 16911 ET SEQ](#); [SENATE BILL \(SB\) 1460 \(CHAPTER 772, STATUTES OF 2014\)](#); [ASSEMBLY BILL \(AB\) 403 \(CHAPTER 773, STATUTES OF 2015\)](#); [PENAL CODE \(PC\) SECTIONS 11105.2, 11105, 11105.08 AND 11170\(a\)](#); WELFARE AND INSTITUTIONS CODE (WIC) SECTIONS [361.4, 366.24\(c\)\(D\)\(4\), 366.24\(1\)\(B\)\(2\), 827 AND 10553.12](#); [HEALTH & SAFETY CODE \(HSC\) SECTIONS 1505, 1522\(g\)\(1\)\(A\)\(i\), 1522\(g\)\(1\)\(B\) AND 1522\(g\)\(1\)\(C\)](#); [CODE OF FEDERAL REGULATIONS \(CFR\) TITLE 45, SECTION 1355.20](#); [RESOURCE FAMILY APPROVAL \(RFA\) WRITTEN DIRECTIVES 4.1, SECTION 1-04\(A\)](#); AND [SOCIAL SECURITY ACT SECTIONS 471\(a\)\(20\)\(A\)\(i\), 471\(a\)\(20\)\(A\)\(ii\) AND 472\(a\)\(2\)\(B\)\(ii\)](#)

The purpose of this All County Letter (ACL) is to provide information and instructions to county child welfare and probation agencies regarding recent legislation, SB 1460 (Chapter 772 Statutes of 2014) and AB 403 (Chapter 773, Statutes of 2015), giving federally recognized tribes the ability to conduct their own background checks for purposes of approving homes for placement of Indian children. The SB 1460 amended

PC sections 11105 and 11170(a) and added WIC section 10553.12. The AB 403 clarified the definition of “tribal agency,” and provided the California Department of Justice (CDOJ) approved tribes with the authority to conduct criminal and child abuse background checks of all necessary parties, as well as to grant exemption requests, for prospective Tribally Approved Homes (TAHs).

Program Background

Since 1978, when ICWA was enacted by Congress, federally recognized tribes have had the authority to approve or license their own foster homes (25 USC sections 1915(b) and 1931(a)(1)). In order for dependent Indian children to qualify for foster care funding pursuant to Title IV-E of the Social Security Act, however, TAHs must meet the minimum federal standards, including criminal and child abuse screenings, prior to placement (41 USC section 671(a)(10) and 45 CFR section 1355.20).

Prior to the passage of SB 1460, only county child welfare agencies were authorized to complete the background check portion of the home assessment. When a tribe had a placement in mind for an Indian child, they would be required to wait for the county with responsibility for the child to conduct the background check investigation, unless that home was already licensed by a licensing agency. Indian children would often have to be removed from their tribal community of origin and placed in a county home without tribal affiliation, pending the county’s evaluation of the background check.

Because the background check could only be completed after the tribe had a specific child in mind for the prospective placement, tribes were unable to have a pool of approved foster/adoptive homes in which to place Indian children who were removed from their homes when an emergency occurred. This has led to unintended barriers to compliance with ICWA placement preferences. The passage and implementation of SB 1460 provides greater opportunities for Indian children to remain in their communities of origin, when placement with the parent or Indian custodian is no longer appropriate.

Tribal Agencies

A “tribal agency” is “an entity designated by a federally recognized tribe as authorized to approve homes consistent with the 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” (WIC section 10553.12(d) and PC section 11105.08(g)). Tribal agencies are expressly “authorized to conduct a criminal or child abuse background check of, and grant exemptions to, an individual who is prospective foster or adoptive parent, an adult who resides or is employed in the home of an applicant for approval, any person who has a familial or intimate relationship with any person living in the home of an applicant, or an

employee of a tribal child welfare agency who may have contact with a child” (Ibid). A tribe from outside of California may designate a California tribal agency for purposes of approving homes for foster or adoptive placement.

If an Interstate Compact for Placement of a Child (ICPC) assessment is required for an Indian child moving out of California, the county of jurisdiction in the receiving state will need to conduct the assessment and background check per ICPC guidelines. A California tribe may also request an out-of-state tribe to provide a culturally appropriate assessment, but SB 1460 does not give authority to federally recognized tribes that are not located in California to conduct their own background checks.

Because the authority for tribes to approve their own foster and adoptive homes comes from ICWA and because ICWA applies only to federally recognized tribes, tribes which are not federally recognized are not eligible to perform their own background checks and exemptions. They also may not designate a tribal agency to complete background checks for purposes of foster home approval.

Tribes Set Their Own Standards for Approving Tribal Homes

It is important for county social workers and probation officers to be aware that TAH’s are not subject to state licensing approval standards. Federally recognized tribes have the independent authority to approve foster homes using their own socially and culturally appropriate standards (see generally 25 USC section 1931(b) and 45 CFR section 1355.20).

California has further affirmed in state law that a TAH is not subject to state licensing requirements when placing an Indian child with a relative or extended family member, or in a home licensed, approved or specified by the child’s tribe (HSC section 1505(o)). Counties cannot attempt to hold a TAH to licensing standards as long as the home is approved by the tribe.

Foster Care Payments

When an otherwise Title IV-E eligible child is placed in a TAH, that TAH is qualified to receive foster care payments as long as the home meets the federal background check requirements, regardless whether the tribal agency or county agency completed the background checks. In order for a TAH to qualify for payments, a criminal records check must be completed as per section 1522 of the HSC, and the check must reveal that the prospective foster or adoptive parent has not been convicted of any prohibited felonies, and in the case of a foster family home, the home must be licensed or approved (section 471(a)(20)(A)(i) and 471(a)(20)(A)(ii) of the Social Security Act). This applies regardless of the entity that licenses or approves the prospective parent (e.g., a

private adoption agency, an Indian tribe either with or without an agreement under section 472(a)(2)(B)(ii) of the Act, or a private child placing agency not under contract with the State agency). Tribes or their tribal agencies with an agreement with the CDOJ for purposes of background check approval are required to meet these criteria, when placing a child supervised by the county.

County Procedures with a Federally Recognized Tribe without Authority to Perform Background Checks

When connecting with a federally recognized tribe or tribal agency, the county or probation agency shall inquire as to whether the entity has any available placements for the child(ren). Included in this conversation should be an inquiry as to whether the tribe has received approval from the CDOJ to conduct its own background checks. When a federally recognized tribe does not have CDOJ authorization to conduct background checks, but the tribe has otherwise approved the TAH, the county should obtain documentation from the tribe as to the approval. The method of documenting the tribal approval, however, is not prescribed or specified in the law. The county must accept documentation provided by the tribe.

Thereafter, the county shall perform the background check for the tribe (WIC section 361.4). If the tribe seeks placement in a home where a member of the home has a conviction for an exemptible criminal offense, the California Department of Social Services (CDSS) or the county, at the tribe's request, shall evaluate the exemption (WIC section 361.4(f)). The county child welfare agency or probation department is responsible for completing only the [SOC 815](#). The SOC 815 records that a caregiver/home has met all the tribe's assessment standards and the county child welfare agency or probation department is required to complete portions of the SOC 815. For more information on the process for background checks and exemptions in TAHs, instructions for completion of the SOC 815, and other eligibility forms in this scenario, please see [ACL 14-10](#).

County Procedures with a Federally Recognized Tribe with Authority to Perform Background Checks

When a tribal agency with CDOJ authorization to conduct background checks has approved a home for placement of an Indian child, the county may place the Indian child in the TAH upon receiving certification of specific information from the tribe (WIC section 10553.12(e)). The certification provided by the tribe to the county must reflect the following:

- 1) That the tribal agency has completed a criminal record background check pursuant to the standards set forth in section 1522 of the HSC for the prospective foster or

adoptive parent, any adult who resides in the TAH, and any person who has a familial or intimate relationship with any person living in the TAH, and/or any employee of the tribal agency who may have contact with the Indian child or children placed in the home (WIC section 10533.12(c) and (e)(1);

- 2) That the tribal agency has agreed to report to the county child welfare agency responsible for the child placed in the TAH, within 24-hours of notification to the tribal agency by the CDOJ, of a subsequent state or federal arrest or disposition involving an individual associated with the TAH where the Indian child is placed (WIC section 10553.12(e)(2); and
- 3) That, if any individual was granted a criminal records exemption, the exemption was evaluated in accordance with the standards and limitations set forth in HSC section 1522(g)(1) and was not granted to an individual ineligible for an exemption under that provision (WIC 10553.12(e)(3)).

The tribe may choose to provide this information using the sample letter provided by CDSS (see attachment), but the certification may come in other forms. If the certification satisfies the requirements of WIC section 10553.12(e), the county must accept it regardless of the format.

Because not all tribal agencies have access to the Child Welfare Services/Case Management System (CWS/CMS), the placing county agency social worker or probation officer will be responsible for entering the information from the tribe's home approval certification onto CWS/CMS. Accurate and timely data entry will allow the TAH to receive a foster care payment, assuming the Indian child is otherwise a Title IV-E eligible child.

County Collaboration with Tribes and Tribal Families

Counties continue to have access to Indian children who are placed in a TAH. If the home is on tribal land, or if the tribe has otherwise requested, however, the county should respect tribal sovereignty and contact the tribal agency to plan a visit to the home. If the county has concerns about the Indian child's health, safety or other treatment in a TAH, it should let the tribal agency social worker or staff person know immediately, so that a collaborative effort is made to address the issues presented. The building of relationships with tribal families and with the tribal agency is in the best interest of the Indian child, and will serve all parties.

It is important to remember that a culturally relevant lens is critical to the accurate evaluation of a TAH. An approved TAH may not appear to meet all state approval standards, but will be well-suited for an Indian child when considered in cultural context. The federally recognized tribe is best able to determine which homes fit the standards of their unique tribal culture.

The county child welfare agency has no authority to undo a tribe's approval of a home, but must consider whether the home is the appropriate placement for the dependent Indian child. In doing so, it must work with the tribe to address any concerns the county, court, child's attorney, or the child's parent(s) may have with the placement.

Counties and their local federally recognized tribes may find it helpful to enter into Memorandums of Understanding so that procedures are outlined in advance of an Indian child needing placement.

Assisting Tribal Agencies with Evaluating Background Check Results

Tribal agencies who are authorized by the CDOJ to conduct their own background checks will receive results regarding their fingerprinted applicants, including the Child Abuse Clearance Index (CACI) and Criminal Offender Records Information results. When a background check reveals a history of one or more exemptible criminal convictions or substantiated allegations of child abuse or neglect, the tribal agency will need to investigate the results to determine whether an exemption should be approved, if the tribe has chosen to allow for exemptions.

Tribal agencies that perform their own background checks are entitled to access county child welfare case information for purposes of evaluating the CACI results (PC section 11170(a)(8) and WIC sections 827(f) and 10553.12). County agencies should assist tribal agencies with their requests for records in an expeditious manner so as to avoid delays in the approval process of the tribal home and potential placement of an Indian child. Tribes and tribal agencies also have the authority to view criminal history records and obtain them from law enforcement agencies (WIC section 10553.12 and HSC sections 1522 and 1522.1).

The CDSS asks that county agencies and law enforcement comply with statutory scheme and assist tribal agencies with their requests for these records. The CDSS is available to provide technical assistance to both counties and tribes when and if questions arise regarding release of child welfare and criminal history information. For further information about receiving assistance with this process, please see the "Technical Assistance for Tribes" section of this letter below.

Disagreement Regarding Placement in a TAH

Should a county disagree with the placement of an Indian child in a particular TAH, and collaborative efforts with the tribe have failed to resolve the disagreement, the county must prove in court that the county has "good cause" to deviate from the ICWA placement preferences. When assessing whether good cause exists to deviate from the preferences, the court and county may not rely on the socioeconomic status of the

proposed caregiver or ordinary bonding between the child and a non-tribal caregiver (25 CFR sections 23.129 through 23.132). The individual circumstances of each child should be assessed in relation to each placement, with weight given to the legal presumption that placement in a tribal home is in the child's best interests.

Emergency Placements

Tribal agencies were not given the authority to conduct emergency placement evaluations by SB 1460. Tribes must continue to rely on county agencies to conduct emergency placement background checks when an emergency placement is needed, and a tribal home has not been approved in advance. The CDSS is working to improve recruitment and retention of tribal foster homes so that more ICWA compliant placements are available throughout the state.

Technical Assistance for Tribes

The CDSS provides technical assistance to assist federally recognized tribes to acquire these new capabilities and to comply with the law in Indian child welfare program implementation. This includes assistance with the evaluation of exemptions, as per HSC sections 1522 and 1522.1. For materials, resources and assistance, please contact TribalBackgroundChecks@dss.ca.gov.

Resource Family Approval and SB 1460 Approved Tribes/Tribal Agencies

All counties in California have implemented the RFA program, which mandates that all types of placements (foster, relative and adoptive) receive the more extensive, adoption level background check. The RFA background check requirements do not apply, however, to TAHs in ICWA cases. While tribal agencies have the authority to conduct adoption level background checks, the level of background check utilized for relative and foster care placements is determined by the tribal agency (PC section 11105.08, WIC section 366.24(c)(D)(4) and RFA Written Directives 4.1 section 1-04(a)). Should a tribal agency be assessing a TAH for purposes of a tribal customary adoption, the TAH will be required to receive the adoptive level of background check (WIC section 366.24(1)B(2) and HSC sections 1522 and 1522.1). More information about tribal customary adoption is available in [ACL 10-47](#).

Conclusion

The passage of SB 1460 created authorization for tribes to fully approve their own relative, foster and adoptive homes. This letter serves to ensure that counties understand that federally recognized tribes with the authority from the CDOJ to conduct their own background checks may complete the approval and exemption process

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without the county's involvement. It also serves to emphasize how counties should work with the tribes to ensure that documentation of the TAH approval is proper.

If you have questions regarding the contents of this letter or for assistance with implementation of SB1460 and resources, please contact the Permanency Policy Bureau through TribalBackgroundChecks@dss.ca.gov or at (916) 657-1858.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

Attachment

c: County Welfare Directors Association
Chief Probation Officers of California
Judicial Council of California

Attachment

TRIBAL AGENCY LETTERHEAD

Dear _____ County Social Worker/Probation Officer,

RE: Senate Bill 1460 Tribally Approved Home and Clearance

THIS IS TO CERTIFY THE FOLLOWING:

1. The home located at _____, _____ has been approved as a **Tribally Approved Home** pursuant to the Indian Child Welfare Act for use as a prospective foster or adoptive home for _____, a child that is or may be covered by the Indian Child Welfare Act.

2. Pursuant to Welfare and Institutions Code section 10553.12, the following individual or individuals associated with the home have been cleared or granted exemptions, consistent with standards set forth in California Health and Safety Code section 1522 and 1522.1.

Name: _____
Date of Approval _____
Date of Birth _____
Residence _____
Relation to the Home _____
(e.g. Resident, employee, in relationship with resident)
Date Cleared (no criminal/CACI history) _____
Date Exemption Granted _____

Name: _____
Date of Approval _____
Date of Birth _____
Residence _____
Relation to the Home _____
(e.g. Resident, employee, in relationship with resident)
Date Cleared (no criminal/CACI history) _____
Date Exemption Granted _____

Attachment

Name: _____
Date of Approval _____
Date of Birth _____
Residence _____
Relation to the Home _____
(e.g. Resident, employee, in relationship with resident)
Date Cleared (no criminal/CACI history) _____
Date Exemption Granted _____

3. In the event that we receive a report from the California Department of Justice that there has been a report of a **subsequent arrest or conviction** of any of the above listed individuals, **we certify that we will notify you within 24-hours of receipt of the report from the California Department of Justice.**

4. In the event that this Tribal Agency revokes the clearance or exemption, we will notify you of the revocation immediately, and no later than 24-hours. Please verify the assigned county social worker for this child, if different from the above noted Social Worker.

The Tribal Agency contact for this Tribally Approved Home is _____ who can be reached at (__) _____.

So Certified on -----, at -----

Signed,

(Insert name and title of person authorized to provide this certification, e.g. the director of the tribal agency)